

# GOVERNING WATER IN INDIA

Review of Law and Policy Developments



ENVIRONMENTAL LAW RESEARCH SOCIETY



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The Environmental Law Research Society (ELRS) seeks to contribute towards the establishment of legal and institutional frameworks to promote conservation and use of environment and natural resources. ELRS envisions enhanced awareness of environmental laws and policies among stakeholders.

Designed by ODD

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# I

## INTRODUCTION

**Water** is indispensable to sustain life. The availability of, access to, and quality of, water are crucial factors for determining the quality of life of human beings as well as other living beings. Water is also essential for overall economic development. Water is a basic necessity for food production and it is also required for various industrial and commercial activities. Thus water plays a critical role in poverty eradication. However, there are several unresolved issues related to availability, use and management of water.

People queue in front of water tankers for hours and women walk long distances to collect drinking water. The controversial issue of over-exploitation of groundwater by water-based industries (e.g. Coca-Cola in Plachimada, Kerala) provides an example of **over-use by one industry (or person) affecting the life and livelihood of an entire community**. The recurring inter-State disputes over sharing key rivers in the country have sometimes led to public unrest (e.g. the Cauvery River dispute between Tamil Nadu and Karnataka). These situations and problems demand regulation of water.

Water laws deal with **ownership, access to, and control of water**, as well as the issue of water quality together with its environmental and health implications. Water laws in India also address the inter-state and transboundary dimensions of water, the division of powers between the Government of India (the 'Central government'), state governments, local government bodies (municipalities in urban areas and panchayats in rural areas), and public and private actors.

But there is no comprehensive legal framework for the water sector in India. Instead the sources of water laws include:

- Constitution of India (for relevant provisions, see Annex I)
- Legislation or Acts (sometimes referred to as 'laws')
- Decisions of the Supreme Court of India, High Courts, district courts and *nyay panchayats*<sup>1</sup>
- Common law or law developed by English judges through judicial decisions, as applied in India
- Customary norms or rules of behaviour that may be unwritten but are established by long practice or usage<sup>2</sup>

... there is no comprehensive legal framework for the water sector in India.

... policies cannot  
set out the  
general regulatory  
framework.

In several cases, the development of water laws has been influenced by policies and administrative directions (programmes and schemes) adopted by the executive (Central/ state government). In other cases, policies rather than laws attempt to regulate water. But policies cannot set out the general regulatory framework. They do not create binding rights and obligations and they are non-enforceable through a court of law. Further, policies can be easily modified at any time. Similarly, administrative directions suffer from several limitations. Their scope is often restricted. They do not consider the various aspects of water regulation, such as the different dimensions of water (human rights, environment etc.), do not prioritise the different uses of water and fail to address issues concerning the links between water and food, health, agriculture, and energy.

The existence of a number of laws, policies and administrative directions and their technical nature makes it difficult for practitioners, activists and other stakeholders to understand and use them for the benefit of society and the environment.

The objective of this primer is to introduce some of the salient features of the existing regulatory framework relating to water in India, as well as the ongoing changes, to members of the public, civil society organisations, and government agencies. It does not attempt to provide an exhaustive description of the existing framework.

It is hoped that ...  
this primer will  
raise more questions  
about the existing  
framework (of law)  
and ... facilitate  
dialogue ...

It is hoped that in addition to **filling the knowledge gap**, this primer will raise more questions about the existing framework and the changes, facilitate dialogue and a better understanding of the problems plaguing the water sector, and eventually result in more effective and **equitable solutions**.

This section identifies some of the key features of water laws and policies in India.

## 2

## FEATURES OF WATER LAWS & POLICIES

### 2.1 Source-Based and Use-Based Rules

A distinct feature of water laws is the development of different rules for different sources and uses of water. The corresponding rights of individuals and powers of government also differ.

Table 1 explains the different *source-based rules* by taking the example of surface water (which includes rivers, lakes and streams but excludes tanks and ponds) and groundwater (that is, water located beneath the ground surface).

TABLE 1

	Surface Water	Groundwater
<b>Powers</b>	Government control and responsibility for allocation	Individual control
<b>Rights of individual</b>	<ul style="list-style-type: none"> <li>• Link between access to surface water and land rights</li> <li>• Non-landowners do not benefit</li> <li>• No ownership right but landowners can use surface water passing through/ bordering their lands for private use.</li> </ul>	<ul style="list-style-type: none"> <li>• Part and parcel of land</li> <li>• Right of landowner to collect and dispose of all the water under his/ her land</li> </ul>
<b>Laws</b>	Irrigation laws	State groundwater laws

Table 2 illustrates the application of *use-based rules* with reference to irrigation and drinking water.

TABLE 2

Irrigation	Drinking water
Irrigation laws at the state level	Individual control
Examples <ul style="list-style-type: none"> <li>• Bihar Irrigation Act, 1997</li> <li>• Assam Irrigation Act, 1983</li> </ul>	Examples <ul style="list-style-type: none"> <li>• Draft Guidelines for Preparation of Legislation for Framing Drinking Water Regulations 2007</li> <li>• National Rural Drinking Water Programme 2010</li> <li>• Karnataka Urban Drinking Water and Sanitation Policy 2003</li> </ul>

### 2.2 Control Over Water

The government exercises control over surface water. However this control is not absolute. The government continues to owe a responsibility to the people and the legal basis of this obligation is derived from the public trust doctrine.

the government  
is responsible for  
the protection and  
preservation of  
natural resources

The public trust doctrine states that the government is not an owner but a trustee of natural resources (such as water) for and on behalf of the beneficiaries (the public). Therefore, the government is responsible for the protection and preservation of natural resources. In the context of water, this means that the government must manage and develop it without depriving any individual or groups of access to it or significantly affecting ecosystem needs. As a result, the government cannot exercise absolute rights over water. In this manner, the doctrine moves away from state laws asserting government ownership over water (for example, irrigation laws).

The Supreme Court of India has applied the public trust doctrine to redefine the relationship between surface water and the government. The doctrine has been discussed extensively in the case of *M.C. Mehta v. Kamal Nath* [see Box A].<sup>3</sup>

**BOX A: Public Trust Doctrine and the Supreme Court: *M.C. Mehta v. Kamal Nath***

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

The court *inter alia* held as follows:

25. The public trust doctrine primarily rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes.
33. ... We see no reason why the public trust doctrine should not be expanded to include all ecosystems operating in our natural resources.
34. Our legal system - based on English common law - includes the public trust doctrine as part of its jurisprudence. The state is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the sea-shore, running waters, airs, forests and ecologically fragile lands. The state as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership.
35. ... [I]n the absence of any legislation, the executive acting under the doctrine of public trust cannot abdicate the natural resources and convert them into private ownership or for commercial use. The aesthetic use and the pristine glory of the natural resources, the environment and the ecosystem of our country cannot be permitted to be eroded for private, commercial or any other use unless the courts find it necessary, in good faith, for the public good and in public interest to encroach upon the said resources.
39. We, therefore, direct and order as under:
  1. The public trust doctrine, as discussed by us in this judgment is a part of the law of the land.

Subsequently, the Supreme Court has affirmed the public trust doctrine in other cases.<sup>4</sup> The doctrine, therefore, forms a part of the water law in India. But none of the state laws have been amended as a result of this case.

The application of the public trust doctrine may influence the type of rights and privileges that can be claimed over surface water. However, the applicability of the doctrine to groundwater is unclear [see Box Q below].

## 2.3 Inter-Sectoral Allocation

The allocation of water among different sectors or uses (also known as inter-sectoral allocation) has several dimensions. These include allocation of water between urban and rural areas, as well as between different sectors or uses such as drinking, irrigation and industrial use. It also involves the priority allotted to each sector or use in times of water scarcity.

Inter-sectoral allocation is a feature of water policies in India. The **National Water Policy 2002** and most state-level water policies include a priority list. In most cases, drinking water comes first and irrigation second, followed by other sectors such as industrial use or navigation. The **draft National Water Policy 2012** prioritises water for essential health and hygiene, ecological needs of the river and livelihood support to the poor and national food security. However, no order of priority is mentioned. **Table 3** provides an indicative list of priorities envisaged under the National Water Policy 2002 as well as three state water policies.

The National Water Policy 2002 states that the priorities can be modified with reference to area/ region-specific considerations. This means that the order of priority is not binding and state governments can adopt a different priority list. For instance, the **Maharashtra State Water Policy 2003** prioritises industrial, commercial and agro-based industrial use over agriculture. The **draft Punjab State Water Policy 2008** allows for modification of all priorities except drinking water. On the other hand, the **Orissa State Water Policy 2007** specifically prohibits the re-ordering of priorities and an alteration in priorities requires formulation of a new policy.

inter-sectoral allocation involves the priority allotted to each use or sector in times of water scarcity

TABLE 3

	<b>National Water Policy 2002</b>	<b>Karnataka State Water Policy 2002</b>	<b>Uttar Pradesh State Water Policy 1999</b>	<b>Maharashtra State Water Policy 2003</b>
1	Drinking water	Drinking water	Drinking water	Domestic use for drinking, cooling, hygiene and sanitation needs including livestock
2	Irrigation	Irrigation	Irrigation	Industrial, commercial use and agro-based industrial use
3	Hydro-power	Aquaculture	Hydro and thermal power	Agriculture and hydropower
4	Ecology	Agro-industries and non-agricultural industries	Agro-industries and non-agricultural industries	Environment and recreation uses
5	Agro-industries and non-agricultural industries		Navigation and other uses	All other uses
6	Navigation and other uses			

## 2.4 Devolution of Powers to Democratically Elected Local Bodies

Decentralization is generally defined as the transfer of authority from the Central government to a local government in the context of a constitutionally defined system of governance. The 73rd and 74th Constitutional Amendment Acts of 1993 represent the first attempt to give a new constitutional status to local self-government institutions, that is, panchayats and municipalities [see Table 4].

TABLE 4

<b>Rural areas</b>	Part IX inserted by 73rd constitutional amendment	Three-tier Panchayat system - village, intermediate and district levels (Article 243B)
<b>Urban areas</b>	Part X inserted by 74th constitutional amendment	Nagar Panchayat (by whatever name called), Municipal Council (for smaller urban area) and Municipal Corporation (for larger urban area) levels (Article 243Q)

Water and sanitation are included in the list of matters under Article 243G and Article 243W of the Constitution read with Eleventh and Twelfth Schedules respectively in relation to which powers and responsibilities can be devolved on panchayats and municipalities. However, the list is advisory in nature. The devolution of powers on panchayats and municipalities cannot be presumed.

The Constitution confers discretionary power upon states, which they may choose to exercise or not, to pass laws devolving powers and responsibilities to panchayats and municipalities in order to enable them to function as institutions of self-government. A majority of states have taken up the mandate.





This section identifies some of the recent and ongoing law and policy developments relating to drinking water, water quality, sanitation, irrigation, groundwater and regulatory authorities.

### 3.1 Drinking Water

State governments are primarily responsible for the provision of drinking water. In the absence of a specific drinking water law, the responsibility of drinking water supply is being handled at different levels. Laws regulating local bodies include provisions relating to drinking water supply. The responsibility of local bodies is derived from the constitutional amendment, which envisaged the devolution of power and responsibilities to panchayats/municipalities in relation to drinking water.<sup>5</sup>

Although drinking water is the responsibility of state governments, the Central government also plays an important role such as framing guidelines and providing financial support.

#### RIGHT TO WATER

Over the past couple of decades, the legal framework concerning water has been complemented by a human rights dimension. The core message is that all human beings are entitled to equal and non-discriminatory supply of a sufficient amount of water. This has led to the demand for legal recognition of the right to water and corresponding changes in water-related laws and policies.

The Constitution of India grants certain fundamental rights to the citizens of India. Citizens can use the legal system in case of infringement/denial of these fundamental rights. Although the Constitution does not specifically recognise a fundamental right to water, the Supreme Court and various high courts have read this right as being a part of the fundamental right to life enshrined in Article 21 of the Constitution [*see Box B*].

The judicial recognition of a fundamental right to water is a significant development. However, in the absence of express legal provisions that define the fundamental right to water, water cannot be guaranteed to every individual irrespective of caste, gender, land rights and ability to pay.

Unlike India, where the fundamental right to water is impliedly included within the fundamental right to life recognised by the Constitution, the constitutions of some countries expressly include access to water as a fundamental human right.

#### BOX B: Right to Water and the Courts

##### SUPREME COURT

- *Subhash Kumar v. State of Bihar* (1991): [T]he right to live is a fundamental right under Article 21 of the Constitution and it includes the right of enjoyment of pollution free water and air for full enjoyment of life [para 7].
- *State of Karnataka v. State of Andhra Pradesh* (2000): [T]here is no dispute that under the constitutional scheme in our country right to water is a right to life and thus a fundamental right [para 186].

##### HIGH COURTS

- *F.K. Hussain v. Union of India* (1990): The right to life is much more than the right to animal existence and its attributes are many fold, as life itself. A prioritisation of human needs and a new value system has been recognised in these areas. The right to sweet water, and the right to free air, are attributes of the right to life, for, these are the basic elements which sustain life itself [para 7].
- *Hamid Khan v. State of Madhya Pradesh* (1996): [State] is also covered by Article 21 of the Constitution of India and it is the right of the citizens of India to have protection of life, to have pollution free air and pure water. . . Therefore, it was the duty of the state towards every citizen of India to provide pure drinking water [para 6].
- *Vishala Kochi Kudivella Samrakshana Samithi v. State of Kerala* (2006): . . . failure of the state to provide safe drinking water to the citizens in adequate quantities would amount to a violation of the fundamental right to life enshrined in Article 21 of the Constitution of India and would be a violation of human rights. Therefore, every government, which has its priorities right, should give foremost importance to providing safe drinking water even at the cost of other development programmes [para 3].

- South Africa (1996): Everyone has the right to have access to... sufficient ...water (Article 27(1)).
- Uruguay (1967) (amended in 2004): Access to drinking water... constitute fundamental human rights (Article 47).

The existence of a human right to water is also recognised in several international documents [Box C].

Besides judicial decision, there is relatively little in the legal and policy framework in India that recognises the fundamental right to water.

- The **National Water Policy 2002** calls water a 'basic human need' rather than a 'right'. The draft National Water Policy 2012 however recognises access to safe and clean drinking water as a right to life.
- The **National Rural Drinking Water Programme 2010** is concerned with the provision of safe water for 'basic needs' rather than water as a 'fundamental right'.

### BOX C: Right to Water in International Documents

- General Comment (No. 15) on the right to water adopted by the United Nations Committee on Economic, Social and Cultural Rights, 2002: The human right to water “entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses”.
- Convention on Elimination of Discrimination Against Women, 1979: Article 14(2)(h) explicitly mentions about provision of water. . . to women.
- Convention on the Right of the Child, 1989: Article 24 (2) (c) includes right to safe drinking water of a child from a non-polluted source.
- United Nations General Assembly Resolution 64/292, 2010: The General Assembly recognizes “the right to safe and clean drinking water. . . as a human right that is essential for the full enjoyment of life and all human rights”.
- United Nations Human Rights Council Resolution on Human Rights and Access to Safe Drinking Water and Sanitation, 2010: “[T]he right to water. . . is derived from the right to an adequate standard of living, which is contained in several international human rights treaties”.

- A large number of laws relate to water and water-based resources but they pay scant attention to the implementation of the right to water.

### ISSUES FOR FURTHER ACTION

Raise awareness about the right to water

- Introduce capacity building programmes for individuals and communities to improve access to information about, and access to justice for the enforcement of, the right to water
- Protect the right to water (especially of vulnerable communities)
- Advocate for the inclusion of the right to water in express legal provisions
- Facilitate monitoring and surveillance of implementation of the right to water

## RURAL WATER SUPPLY

### Laws & Policies

Water supply related changes in rural areas include laws, changes in existing policies, and adoption of new policies, by the Central government, adoption of new policies by the state governments, as well as development of projects supported by external agencies, such as the World Bank.

### CENTRAL LEVEL

The Central government has played an important role in fashioning the policies that states apply and provided significant funding to ensure access to water in rural areas. However, these policy documents are legally non-enforceable and subject to government discretion.

The Accelerated Rural Water Supply Programme (ARWSP) served as the basis for the Central government's interventions in rural drinking water supply from 1972 to 2009. The ARWSP Guidelines 1999 were an early indication of the Central government's reform-oriented approach [see Box D].

**BOX D: Accelerated Rural Water Supply Programme**

- Different levels of coverage – non-covered (less than 10 litres per capita per day (lpcd)), partially covered (10 to 40 lpcd) and covered habitations (more than 40 lpcd)
- Criterion to determine covered habitation
  - o Minimum level of coverage (quantity): 40 lpcd (3 litres for drinking, 5 litres for cooking, 15 litres for bathing, 7 litres for washing utensils and the house and 10 litres for ablutions)
  - o Public or private source of water within 1.6 km or at 100 metre elevation in mountain areas
  - o A public source of water (e.g. hand pump) should not be used to serve more than 250 people

In 2002, the Ministry of Rural Development introduced the *Swajaldhara* scheme and extended the key ingredients of the World Bank-sponsored pilot project, the Uttar Pradesh Rural Water Supply and Environmental Project or *Swajal*,<sup>6</sup> to the whole country during the Tenth Five-Year Plan period (2002–2007). 20 percent of funds allocated to the ARWSP were directed to reform projects under the *Swajaldhara Guidelines 2002* [see Box E].

**BOX E: Swajaldhara Guidelines**

- Demand-focused approach
- Community participation - ownership of drinking water assets handed over to panchayat
  - o Contribution of at least 10% of capital costs (cash/kind/labour/land or combination)
  - o 100% user responsibility for operation, maintenance & management costs
- Provision of 90% of project cost as Central government grant
- Change in government's role from direct service delivery to planning, policy formulation, monitoring and evaluation, and partial financial support

The Eleventh Five-Year Plan (2007–2012) identified a host of issues relating to water and sanitation in rural areas. In order to address these issues, the entire rural water supply programme and guidelines were revised as the **National Rural Drinking Water Programme (NRDWP)** in 2010 [see Box F].

**BOX F: National Rural Drinking Water Programme**

- Broad conception of drinking water by linking drinking water schemes with other schemes such as sanitation, health policy, education and the National Rural Employment Guarantee Scheme
- Shift from specific individual measure (40 lpcd) constituting the minimum level of access to concept of drinking water security at the household level
- Increased focus on the need to provide water on a sustainable basis
  - Source sustainability - ensure availability of water
  - System sustainability - optimise cost of production and capacity building
  - Financial sustainability – at least 50% cost recovery

Further, the Department of Drinking Water and Sanitation (now Ministry of Drinking Water and Sanitation) has prepared a Strategic Plan, 'Ensuring Drinking Water Security in Rural India - Strategic Plan 2011-2022' (Strategic Plan), to help operationalize the NRDWP [see Box G].

**BOX G: Rural Drinking Water Strategic Plan 2011-2022**

- Aspiration – “[A]ll rural households have access to piped water supply in adequate quantity with a metered tap connection providing safe drinking water, throughout the year, that meets prevalent national drinking water standards. . .”
- Five Strategic Objectives
  - Enable participatory planning and implementation of schemes and source sustainability
  - Water quality management
  - Sustainable service delivery (operation and maintenance)
  - Strengthen decentralized governance
  - Build professional capacity

***Future of Public Standposts/handpumps***

Rural drinking water schemes provide for private water connections as well as public standposts. However, public standposts are usually closed soon after the operationalization of the schemes either because of repeated non-payment of charges or the desire to promote membership of schemes. The Strategic Plan also seeks to ensure that by 2022, less than 10 percent of rural households use public taps and less than 10 percent use handpumps. This may adversely affect the poor who, in most cases, rely on groundwater to meet their drinking water needs. However, no alternatives have been provided to ensure access to water.

## gram panchayat is responsible for... drinking water supply

### STATE LEVEL

Historically, the issue of rural drinking water supply has been addressed within existing state-wide legislation or ad hoc policy frameworks have been developed. Since the insertion of Article 243G in the Constitution, states have attempted to address the issue of decentralisation, as reflected in amendments to existing, or enactment of new, panchayat-related laws. For example, under the **Uttar Pradesh Panchayat Raj Act, 1947 (amended in 2007)**, the gram panchayat is responsible for the construction, repair, maintenance and regulation of sources of drinking water supply. However, the exercise of this responsibility may be curtailed by conditions imposed by the state government. The state governments are also engaged in the implementation of Central government's policies and programmes for rural water supply.

### URBAN WATER SUPPLY

#### CENTRAL LEVEL

#### Laws

There is no comprehensive national law dealing with urban water supply. Table 5 provides an overview of the existing Central government documents relating to urban water supply. These documents are not binding but they are a source of reference for government agencies involved in the urban water sector.

TABLE 5

<b>Ministry of Urban Development &amp; Poverty Alleviation</b>	Model Municipal Law 2003	Identifies core municipal functions, including water supply for domestic purposes
<b>Ministry of Drinking Water and Sanitation</b>	Draft Guidelines for Preparation of Legislation for Framing Drinking Water Regulations 2007	Regulate drinking water
<b>CPHEO</b>	Manual on Water Supply and Treatment 1999	Specifies quantitative water supply standards
	Manual on Operation and Maintenance of Water Supply Systems 2005	Guidelines to improve operation and maintenance services

#### Policies & Programmes

The Central government has adopted a number of policies and programmes that include an urban water supply component. Table 6 lists some of the policies and programmes that have been adopted by the Ministry of Urban Development.

TABLE 6

<b>Scheme for Infrastructure Development in Mega Cities</b>	1993-1994	To provide project-related finance for urban infrastructure including water supply in five metro cities - Mumbai, Kolkata, Chennai, Bangalore and Hyderabad
<b>Jawaharlal Nehru National Urban Renewal Mission (JNNURM)</b>	2005-2012	The main-thrust of the sub-Mission on Urban Infrastructure and Governance is major infrastructure projects including those relating to water supply [see Guidelines and Modified Guidelines for Projects of JNNURM 2006].
<b>Urban Infrastructure Development Scheme for Small and Medium Towns (UIDSSMT)</b>	2005-2012	To improve urban infrastructure (including water supply) in all cities/towns, except those covered under JNNURM [see Guidelines]

## STATE LEVEL

**Institutions**

A host of state-level institutions as well as local bodies are involved in the provision of urban water supply. State governments allocate water, generate funds and frame policies while Urban Local Bodies (ULBs) are responsible for planning, designing, and executing water supply projects.<sup>7</sup> They are also responsible for distribution and supply through piped networks, augmentation of water supply, purification, operation and maintenance and collection of water charges. In some large cities, such as Delhi, separate agencies are in-charge of water and sanitation.

ULBs are responsible for... water supply projects

**Parastatals**

In some states, laws have been adopted to constitute a separate authority with full control over all aspects of water supply and sanitation (also known as parastatals). Table 7 provides a representative list of state-level parastatal agencies.

Parastatal authorities have also been established in some metropolitan areas [see Table 8].

**Laws**

Municipal legislation are the primary source of the powers, functions and duties of ULBs relating to urban water supply. These may take the form of Municipalities Act, Municipal Corporation Act, Water Supply and Sanitation Act etc. For ease of reference, they are collectively referred to as 'municipal acts'. Almost all municipal acts contain more or less similar provisions regarding water supply and

TABLE 7

Law	Parastatal Agency
Assam Urban Water Supply and Sewerage Board Act, 1985	Assam Urban Water Supply and Sewerage Board
Gujarat Water Supply and Drainage Board Act, 1978	Gujarat Water Supply and Drainage Board
Karnataka Urban Water Supply and Drainage Board Act, 1973	Karnataka Urban Water Supply and Drainage Board
Kerala Water Supply and Sewerage Act, 1986	Kerala Water Authority
Maharashtra Jeevan Pradhikaran Act, 1976	Maharashtra Jeevan Pradhikaran
Orissa Water Supply and Sewerage Board Act, 1991	Orissa Water Supply and Sewerage Board
Punjab Water Supply and Sewerage Act, 1986	Punjab Water Supply and Sewerage Board
Tamil Nadu Water Supply and Drainage Board Act, 1970	Tamil Nadu Water Supply and Drainage Board
Uttar Pradesh Water Supply and Sewerage Act, 1975	Uttar Pradesh Jal Nigam

TABLE 8

Law	Parastatal Agency
Bangalore Water Supply and Sewerage Act, 1964	Bangalore Water Supply and Sewerage Board
Calcutta Metropolitan Water and Sanitation Authority, 1966	Calcutta Metropolitan Water and Sanitation Authority
Chennai Metropolitan Water Supply and Sewerage Act, 1978	Chennai Metropolitan Water Supply and Sewerage Board
Hyderabad Metropolitan Water Supply and Sewerage Act, 1989	Hyderabad Metropolitan Water Supply and Sewerage Board
Delhi Jal Board Act, 1998	Delhi Jal Board

sanitation, usually in a chapter on water supply and sewerage. The provisions generally specify the powers of ULBs, and the conditions of water supply to users [see *Box H*, for an example of a municipal law].

**BOX H: Urban Water Supply in a Municipal Law: Bihar Municipal Act, 2007**

**[45] Core Municipal Functions**

1. Every Municipality shall:
  - a. Provide on its own or arrange to provide through any agency the following core municipal services:
    - [i] Water supply for domestic, industrial, and commercial purposes

**[170] Duty of Municipality to Supply Water**

1. It shall be the duty of the Municipality to take steps, from time to time, either on its own or through any other agency:
  - a. To ascertain the sufficiency and wholesomeness of water supplied within the municipal area,
  - b. To provide, or to arrange to provide, a supply of wholesome water in pipes to every part of the municipal area in which there are houses, for domestic purposes of the occupants thereof, and for taking the pipes affording that supply to such point or points as will enable the houses to be connected thereto at a reasonable cost...



Water supply is an obligatory function and, therefore, it is the legal duty of ULBs to provide water supply. However, the obligation is not absolute. Its fulfilment is made contingent on various factors, such as proximity of the source, reasonableness of costs, etc. Examples include the New Delhi Municipal Council Act, 1994 and the Andhra Pradesh Municipalities Act, 1965.

## Areas of Concern

### Different Entitlements

The criterion of quantity, quality and regularity of urban water supply may vary in some cases.

Different cities may be governed by different rules. In Uttar Pradesh, urban water supply is regulated partly by the Uttar Pradesh Water Supply and Sewerage Act, 1975 and partly by specific regulations applying to the type of cities, usually categorised according to population size.

Major cities have their own water supply and sanitation legislation [see Table 8 above]. In some cases, different areas of the same city may be governed by different laws. For Example, Delhi is divided into three different areas - cantonment area, New Delhi area and rest of Delhi - which are governed by three different legislations, namely Cantonments Act, 2006, New Delhi Municipal Council Act, 1994 and Delhi Jal Board Act, 1998 respectively.

### Disconnection and the Right to Water

The reforms that view water as an economic good have also led to the introduction of some laws that may lead to a denial of the right to water, implicitly or explicitly. For instance, some laws allow the authorities to disconnect private water supply in case of non-payment of bills. Such provisions are included in the Uttar Pradesh Water Supply and Sewerage Act, 1975 (section 72), the New Delhi Municipal Council Act, 1994 (section 169) and the Mumbai Municipal Corporation Act, 1988 (section 279). While this may facilitate the implementation of reforms by bringing in revenue and ensuring financial sustainability of operations, the possibility of disconnection may also adversely affect the realisation of the human right to water.

some laws allow the authorities to disconnect private water supply in case of non-payment of bills

### Future of Public Standposts

Under some laws such as the Calcutta Metropolitan Water Supply and Sanitation Authority Act, 1966 (section 45(2)) and the New Delhi Municipal Council Act, 1994 (section 154), the relevant authority has the power to provide public stand posts free of charge. However, in the course of implementing urban water sector reforms, the JNNURM and UIDSSMT schemes envisage phasing out of public standposts.

#### ISSUES FOR FURTHER ACTION

- Legal recognition, implementation and enforcement of the fundamental right to water
- Drinking water supply cannot be made contingent upon availability of resources with the government
- Advocate for a comprehensive drinking water law that elaborates the rights of individual and the duties of the government

### Policies

There has been renewed interest in specific state-level urban water policies. An example is the Karnataka Urban Drinking Water and Sanitation Policy 2003.

### Areas of Concern

#### Willingness to Pay

The objective of the Karnataka Urban Drinking Water and Sanitation Policy 2003 is to 'ensure universal coverage of water and sanitation services that people want and are willing to pay for' and 'to ensure a minimum level of service to all citizens'. However, these phrases are not defined in the policy.

### 3.2 Water Quality

The term 'water quality' is defined as "those physical, chemical and biological characteristics of water by which the user evaluates the acceptability of water". Water quality has emerged as a critical issue partly due to the improper disposal of untreated or partially treated effluents, both domestic as well as industrial, which affects the quality of surface water and groundwater. The common causes of water quality problems in India are excessive fluoride, nitrate, arsenic, iron and salinity.

Water quality  
has emerged as a  
critical issue

### Institutions

A few national level institutions directly address water quality regulation issues. However, their powers and functions are mostly

in the nature of directions. The implementation of water quality regulation takes place at the state (and local) level, and the mode of implementation largely depends upon the nature of water resources and their prevailing uses. Table 9 lists the relevant authorities at the national and state level. However, the lack of inter-sectoral coordination has led to overlapping of functions and duplication of efforts.

TABLE 9

National level		State level	Water sources
Ministry of Water Resources	Central Ground Water Board	State groundwater authorities	Groundwater
Ministry of Drinking Water and Sanitation (earlier part of the Ministry of Rural Development)	RGNDWM	State Drinking Water Mission and sanitation departments, through Public Health Engineering Departments, water authorities, local statutory agencies or panchayati raj institutions	Drinking water in rural areas
Ministry of Urban Development and Poverty Alleviation	CPHEEO	Municipal authorities, water authorities, water boards or developmental authorities	Drinking water in urban areas
Ministry of Environment and Forests	Central Pollution Control Board	State Pollution Control Boards	Main rivers and big water bodies
	Water Quality Assessment Authority		Water quality monitoring

## Laws

India does not have uniform and comprehensive water quality norms or standards. The water quality regulatory framework is highly fragmented and complex. It is made up of a variety of instruments – laws, rules, administrative regulations and guidelines – with varying scope and application. Further, different standards apply in different contexts and they are not necessarily binding.

Judicial decisions may also provide some assistance. For example, the right to water under Article 21 of the Constitution has been read to include a duty upon the state to provide its citizens with ‘clean drinking water’/ ‘clean and adequate drinking water’. The obligation of states vis-à-vis water quality regulation can also be derived from the right to health, which has been read into Article 21 of the Constitution.

Duty upon the state to provide...clean drinking water

## Water (Prevention and Control of Pollution) Act, 1974 represents the key legal framework

### CENTRAL LEVEL

The **Water (Prevention and Control of Pollution) Act, 1974** represents the key legal framework addressing the issue of water pollution in India. In order to control discharge of effluents into rivers and streams, the Act prescribes two kinds of regulatory tools: permit system or the consent procedure and prescription of standards for discharge of effluents. The Central Pollution Control Board and State Pollution Control Boards have been constituted to maintain or restore the wholesomeness of water resources in India. They are also responsible for implementation of the Act.

The regulation of water quality is also included in the rules, regulations and notifications issued under the **Environment (Protection) Act, 1986** [see *Table 10*].

TABLE 10

<b>Regulations</b>	Uniform Protocol on Water Quality Monitoring Order 2005
<b>Notifications</b>	Coastal Regulation Zone Notification, 1991
<b>Rules</b>	Hazardous Wastes (Management and Handling) Rules, 1989 (amended in 2000 and 2003)

In addition, institutions (at the Central and State level) have prepared their own water quality norms and standards, which are different from each other. These relate to:

#### [i] Drinking water quality

- a. The Bureau of Indian Standards's<sup>8</sup> **BIS 10500: 1991** assesses the quality of water resources and monitors the effectiveness of water treatment and (piped) supply by the concerned authorities in rural areas.
- b. Ministry of Urban Development, Central Public Health and Environmental Engineering Organisation (CPHEEO)'s **Manual on Water Supply and Treatment 1999** recommends drinking water quality standards in urban areas.

These instruments are not mandatory/ legally binding; they merely constitute best practices. Nevertheless, government agencies directly or indirectly dealing with water quality issues have been using these instruments.

#### [ii] Quality of different sources/uses of water [*Table 11*]

TABLE 11

Ministry	Department	Instrument
Ministry of Drinking Water and Sanitation	RGNDWM	National Rural Drinking Water Programme 2009
		Draft Guidelines for Preparation of Legislation for Framing Drinking Water Regulations 2007
		Operational Manual for Water Quality Testing Laboratories 1990
Ministry of Environment and Forests	Central Pollution Control Board	Guidelines for Water Quality Management 2008
		Guidelines for Water Quality Monitoring 2008 [Box 4: Designated Best Use Classification of Surface water]

### Policies

The Central government's programmes concerning rural water supply include a water quality component. Table 12 highlights some of these programmes.

TABLE 12

<b>RGNDWM</b>	1991	The Mission document lays down parameters and safety standards on water quality.
<b>National Rural Drinking Water Quality Monitoring and Surveillance Programme</b>	February 2006	It institutionalizes community participation and involvement of PRIs at the grassroot level for monitoring and surveillance of the quality of all rural drinking water sources

### STATE LEVEL

State governments are responsible for water supply and public health, as well as regulation of water quality. A number of municipal laws include references to water quality standards. However, a uniform criterion to determine the acceptable standards of water quality is absent. Instead, the criteria include vague terms such as 'fit for human consumption', 'wholesome drinking water', 'pure and wholesome water', 'sufficient supply of pure and wholesome', 'proper and sufficient', 'insufficiency and unwholesomeness', 'defective and insufficient', 'pure and fit for human consumption', etc. This criterion is highly discretionary and its meaning and scope is easily contestable. Further, implementation is usually subject to exceptions, such as 'reasonable costs'.

Even assuming the adequacy of water quality standards, there are no legal provisions which make it mandatory for agencies to conduct proper, effective and periodic monitoring and surveillance. As a result, monitoring and surveillance is discretionary, highly localised

a uniform criterion to determine the acceptable standards of water quality is absent

and fragmented (given the number of responsible institutional mechanisms). It also suffers from resource constraints (limited infrastructure, financial and human resources).

#### ISSUES FOR FURTHER ACTION

- National water quality standards and procedures as part of a framework national drinking water law
- Water quality regulation of privately controlled sources (in addition to public sources)
- Effective and sustainable water quality monitoring with local participation
- Establishment of water quality testing laboratories at local level
- Capacity building and public awareness for community-based programmes

### 3.3 Sanitation

Earlier, the term ‘sanitation’ was used to describe the disposal of human excreta by different means such as cesspools, open ditches and pit latrines. The meaning of the term has expanded in recent years. Today, it is a comprehensive concept which includes liquid and solid waste disposal, food hygiene, and personal, domestic and environmental hygiene. The wider definition of sanitation has been adopted by the key policy documents on sanitation in India, such as the **Total Sanitation Campaign Guidelines 2007** (amended in 2010 and 2011) and the **National Urban Sanitation Policy 2008**.

Insofar as the legal system is concerned, there is no specific law on sanitation in India. The regulatory framework comprises of laws, and different national and state-level policies and programmes, which are not legally binding and susceptible to modification/ withdrawal.

#### BOX I: Right to Sanitation and the Courts

- *Virender Gaur v. State of Haryana* (Supreme Court of India)

Article 21 protects the right to life as a fundamental right. Enjoyment of life and its attainment including their right to life with human dignity encompasses within its ambit, the protection and preservation of the environment, ecological balance free from pollution of air and water, sanitation without which life cannot be enjoyed. Any contra acts or actions would cause environmental pollution. Environmental, ecological, air, water, pollution, etc. should be regarded as amounting to violation of Article 21. Therefore, hygienic environment is an integral facet of right to healthy life and it would be impossible to live with human dignity without a humane and healthy environment. [para 7]

- *L.K. Koolwal v. State of Rajasthan* (High Court of Rajasthan)

Maintenance of health, preservation of the sanitation and environment falls within the purview of Article 21 of the Constitution as it adversely affects the life of the citizen and it amounts to slow poisoning and reducing the life of the citizen because of the hazards created, if not checked. [para 3]

**BOX J: Recognition of the Right to Sanitation: Delhi Declaration 2008**

The Delhi Declaration, which is an important outcome of the Third South Asian Conference on Sanitation (SACOSAN III) held in Delhi in 2008, recognises access to sanitation as a basic right, which should be accorded national priority. It also affirmed the commitment to achieve the national goal and the Millennium Development Goals on total and sustainable sanitation in a time-bound manner.

**Right to Sanitation**

Sanitation is a part of the fundamental right to life under Article 21 of the Constitution of India [see Box I for relevant case-law].

The Delhi Declaration of 2008 demonstrates the Government of India's moral commitment to recognise the right to sanitation [see Box J]. However, serious efforts to recognise/ incorporate the right to sanitation into the relevant laws and policies are missing.

The implementation of the right to sanitation must also address the social dimension of sanitation, which includes eradication of the practice of manual scavenging, which has been legally prohibited by the **Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993**. At present, although the law has been gradually adopted in many states, the practice continues unabated. The right to sanitation must also incorporate the rights of sanitation workers, such as sewage cleaners. These include the right to life, dignity, health, protection from occupational diseases etc.

right to sanitation  
must also  
incorporate the  
rights of sanitation  
workers

**RURAL SANITATION****Laws**

State governments are responsible for sanitation.<sup>9</sup> They may devolve powers and responsibilities regarding health and sanitation to

**BOX K: Rural Water Supply in a Panchayat Law: Haryana Panchayati Raj Act, 1994**

"[21] Functions and Duties of Gram Panchayat

Subject to such rules as may be made, it shall be the duty of the gram panchayat, within the limits of the funds at its disposal, to make arrangements for carrying out the requirements of sabha area in respect of the following matters. . . :

**XVIII. Rural Sanitation**

1. Maintenance of general sanitation;
  2. Cleaning of public road, drains, tanks, wells and other public places;
  3. . . .
  4. Construction and maintenance of public toilets
- .."

Central government  
has been involved  
in the development  
and implementation  
of sanitation policies  
for rural areas

panchayats.<sup>10</sup> Panchayat/ panchayati raj laws identify sanitation as one of the responsibilities of panchayats/ gram sabhas [see Box K]. However, the duty of panchayats/ gram sabhas is usually framed in narrow terms and broader issues, such as collection, transportation, treatment and disposal (and reuse), receive little or no attention.

### **Policies & Programmes**

Although it lacks a specific mandate, the Central government has been involved in the development and implementation of sanitation policies for rural areas.

The **Central Rural Sanitation Programme 1986 (CRSP)** was the first country-wide sanitation initiative, which adopted a supply-driven approach, focusing on provision of infrastructure and relying on subsidies to generate demand. This approach was based on the assumption that provision of sanitary facilities would lead to increased coverage and usage. As a result, CRSP failed to motivate and sustain high levels of sanitation coverage. It was restructured as the Total Sanitation Campaign in 1999.

The Total Sanitation Campaign (TSC or *Sampoorna Svachta Andolan*) is a demand-driven, community-led programme to ensure sanitation facilities in rural areas with a broader goal to achieve open defecation-free villages by 2012. The major features of TSC were:

- Demand-driven approach - users get the service they want and are willing to pay for
- Selection of location-specific technologies to match paying capacity encouraged
- Idea of subsidy almost discarded - replaced with incentives
- Information, Education and Communication (IEC) and Capacity Building and Hygiene Education campaigns to create awareness and behaviour change and to generate demand for sanitation facilities
- Participation of Panchayati Raj Institutions, co-operatives, women's groups, Self Help Groups, CBOs and NGOs for implementation

In order to facilitate implementation of the Total Sanitation Campaign, the Ministry of Rural Development issued the Total Sanitation Campaign guidelines in 2004 (revised in 2007 and 2011). The revised TSC Guidelines called for convergence of efforts and integration with activities of departments like Education, Health and Women & Child Development. Accordingly, in 2011, the Ministry of



Rural Development prepared draft guidelines expanding the scope of work under the **Mahatma Gandhi National Rural Employment Guarantee Scheme** to include access to sanitation facilities.

In addition to the existing provisions under the Total Sanitation Campaign, the three goals of the **Rural Sanitation and Hygiene Strategy (2011-2022)** are creation of totally sanitized environments by 2017 (end of open defecation and safe containment and disposal of human waste), adoption of improved hygiene practices by 2020, and solid and liquid waste management by 2022. One of the priorities of the Strategy is to have good convergence among various schemes operated through different ministries/ departments.

## URBAN SANITATION

The regulatory framework governing urban sanitation is more complex than that for rural areas.

### CENTRAL LEVEL

#### Laws

There is no comprehensive urban sanitation law. National laws addressing other issues include provisions relating to, for example, sanitation facilities (such as latrines and urinals) [see Box L].

There is no comprehensive urban sanitation law.

#### BOX L: National Laws Including Provision of Sanitation Facilities

- Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996
- Contract Labor (Regulation and Abolition) Central Rules, 1971
- Disaster Management Act, 2005
- Factories Act, 1948
- Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979
- Mines Rules, 1955

In October 2003, the Ministry of Urban Development and Poverty Alleviation developed a **Model Municipal Law**, which addresses issues relating to drainage and sewerage and solid waste. In addition, a number of legally non-binding documents provide guidance. For instance, the **National Building Code of India 2005** includes a section on 'Water Supply, Drainage and Sanitation'. The **Bureau of Indian Standards (BIS)** has also prescribed sanitation standards. CPHEEO's **Manual on Sewerage and Sewage Treatment 1993** sets out technical norms for best practice in on-site sanitation and wastewater management.

## Policies & Programmes

The National Urban Sanitation Policy 2008 has been formulated to comprehensively deal with the challenges in urban sanitation. The important features of the Policy are highlighted in Box M.

### BOX M: National Urban Sanitation Policy 2008

- Comprehensive definition of sanitation
- Policy goals
  - Awareness generation and behaviour change
  - Achieving open defecation free cities
  - Integrated city-wide sanitation
- Measures to achieve policy goals
- State Level Urban Sanitation Strategies and State Reward Schemes – implementation monitoring by State-level apex body
- Model City Sanitation Plans (CSP) to operationalize State strategies
  - Community participation in creation and maintenance of infrastructure
  - Effective institutional arrangements at the city level
  - Central role of ULBs (or their equivalent structures) in sanitation activities
  - Public-private partnerships in key projects/activities
- Technical assistance and support for awareness generation and capacity building
- Periodic rating of 423 Class 1 cities in respect of various sanitation-related parameters; best performers will be awarded Nirmal Shahar Puraskar

The Tenth Five-Year Plan (2007-2012) recommended an enhanced scope for the Accelerated Urban Water Supply Programme to include sanitation. This was followed by the inclusion of a sanitation component in a number of Central government sponsored schemes, such as JNNURM and UIDSSMT. Additionally the Ministry of Urban Development has formulated benchmarks for service delivery in the sanitation sector. These benchmarks will be used to appraise projects which are proposed for assistance under various schemes of the Ministry as well as externally aided projects.

The other sanitation-related policies/programmes/schemes include:

- Centrally Sponsored Scheme of Low Cost Sanitation for Liberation of Scavengers (now known as the **Integrated Low Cost Sanitation Scheme**) (1980-81): The scheme aims to convert dry latrines into low cost pour flush latrines, rehabilitate workers engaged in the occupation of manual cleaning, and eliminate the practice of open defecation.

- **Valmiki Ambedkar Awas Yojana (VAMBAY)**, a successor to the National Slum Development Program): Community toilet seats have been constructed under this scheme.

#### STATE LEVEL

##### **Laws**

The Constitution provides for the devolution of powers and responsibilities regarding public health and sanitation to municipalities. Most of the municipal/ municipality/ municipalities laws contain a chapter dealing with 'water supply and sanitation', and local authorities are responsible for the provision of these services. In most municipal laws, the local authorities are required to construct/ provide and maintain latrines and urinals and drainage. This, however, is subject to the availability of funds. Other issues, such as collection, transportation, treatment and disposal (and reuse), receive inadequate attention.

In addition, under public health laws and rules, the public health officers can issue directions to local authorities with regard to maintenance of public drains, provision of sanitary conveniences and abatement of nuisance. Examples include the Andhra Pradesh (Andhra Area) Public Health Act, 1939; the Assam Public Health Act, 2010; and the Goa, Daman and Diu Public Health Act, 1985.

Judicial decisions have also endorsed the duty of the local bodies with respect to sanitation [see *Box N*].

##### **BOX N: Right to Sanitation: L.K. Koolwal v. State of Rajasthan**

... Chapter VI deals with three of duties of the Municipality namely, primary duty, secondary functions and special duty. Cleaning public streets, places and sewers, and all spaces, not being private property which are open to the enjoyment of the public, whether such spaces are vested in the Board or not, removing noxious vegetation and all public nuisances are the primary duties of the Municipality. Furthermore, it provides that it is the primary duty of the Municipal Council to remove filth, rubbish, night-soil, odour or any other noxious or offensive matter. The primary duties will have to be performed by the Municipal Board and there cannot be any plea whether the funds are available or not; whether the staff is available or not.

##### **Policies**

The **National Urban Sanitation Policy 2008** encourages states to prepare State Sanitation Strategies taking into account their historic legacy with reference to sanitation, climate and physiographic factors, economic, social and political parameters and institutional

variables, etc. Nine states have formulated their State Sanitation Strategies - Andhra Pradesh, Madhya Pradesh, Karnataka, Kerala, Uttarakhand, Uttar Pradesh, Maharashtra, Orissa and Chattisgarh. State governments are also required to monitor the performance of cities using instruments such as citizens report cards, citizens monitoring committees, self-assessment systems, inter-city computations etc.

The recognition of the importance of sanitation by state governments is illustrated by the development of water and sanitation policies in some states, e.g. **Karnataka Urban Drinking Water and Sanitation Policy 2003**, and specific sanitation policies in other states, e.g. **Uttar Pradesh Urban Sanitation Policy 2009**.

#### ISSUES FOR FURTHER ACTION

- Recognition and realisation of right to sanitation
- Comprehensive sanitation law and monitoring mechanism
- Implementation of sanitation laws and policies with special emphasis on women, SCs/STs, children and other vulnerable sections
- Capacity building measures and financial assistance to strengthen implementation and management powers of PRIs
- Judicial mechanisms to compel local bodies to perform their mandatory duties related to sanitation

...PIM envisages greater involvement of farmers in the management of irrigation systems

### 3.4 Irrigation

Irrigation law is one of the oldest and most developed areas of water law in India. As state governments are responsible for the development of irrigation, there is considerable variation in the nature of irrigation laws between states. Some irrigation laws are general in nature while others address specific issues. *Box O* lists some of these irrigation laws.

#### **Irrigation Law Reforms**

Historically, the government has been responsible for construction and maintenance of irrigation canals and allocation of water to farmers. Irrigation law reforms attribute the failure of irrigation schemes to this practice of administrative centralization and therefore seek to reduce the role of the government. They emphasise a specific issue – decentralization and participation – and propose a specific policy measure – transfer of part of control of irrigation systems to Water User Associations (WUAs) at the local level. This reflects the concept of Participatory Irrigation Management (PIM), which envisages greater involvement of farmers in the management of irrigation systems.

### **BOX O: Irrigation Laws**

#### General irrigation laws

- Bengal Irrigation Act, 1876
- Bihar Irrigation Act, 1997
- Karnataka Irrigation Act, 1965
- Madhya Pradesh Irrigation Act, 1931
- Maharashtra Irrigation Act, 1976
- Orissa Irrigation Act, 1959

#### Laws focusing on specific issues

- Minor irrigation: Rajasthan Minor Irrigation Works Act, 1953
- Canals: Bengal Canals Act, 1864 and Punjab Minor Canals Act, 1905
- Tanks: Tamil Nadu Irrigation Tanks (Improvement) Act, 1949 and West Bengal Tanks (Acquisition of Irrigation Rights) Act, 1974
- Embankments: Assam Embankment and Drainage Act, 1953

In 1998, the Ministry of Water Resources formulated and circulated a model act to be adopted by the states for enacting new irrigation acts/amending the existing irrigation acts to facilitate PIM. The Government of India also recognised PIM as an element of its **National Water Policy 2002**, which encouraged formation of WUAs with authority and responsibility to facilitate management including maintenance of irrigation system. This resulted in specific state laws transferring some responsibilities of irrigation management from government agencies to WUAs or farmers' organisations [see Box P]. However, these reforms only focus on one specific aspect of irrigation, that is, management of water infrastructure by landowning farmers. Even though groundwater is also a major source of irrigation, it is not covered under WUA laws.

these reforms  
only focus on ...  
management of  
water infrastructure  
by landowning  
farmers

### **BOX P: Water User Association Laws**

- Andhra Pradesh Farmers' Management of Irrigation Systems Act, 1997
- Chhattisgarh Sinchai Prabandhan Me Krishkon Ki Bhagidari Adhiniyam, 2006
- Gujarat Water Users' Participatory Irrigation Management Act, 2007
- Madhya Pradesh Sinchai Prabandhan Mein Krishakon Ki Bhagidari Adhiniyam, 1999
- Maharashtra Management of Irrigation Systems by the Farmers Act, 2005
- Orissa Pani Panchayat Act, 2002
- Rajasthan Farmers Participation in Management of Irrigation Systems Act, 2000
- Tamil Nadu Farmers Management of Irrigation Systems Act, 2000
- Uttar Pradesh Participatory Irrigation Management Act, 2009

Farmers have little  
say on many aspects  
of local decision-  
making

### Features of WUA laws

- Three-tiered structure: WUA or *pani panchayat* (primary level), distributory committee (secondary level) and project committee (project level)<sup>11</sup>
- Distribution: one WUA for every water user area
- Membership: all water users who are landowners in the area; reservation for women, SCs and STs in exceptional cases
- Functions: regulation and monitoring of water distribution among members, assessment of water shares, equitable water supply, collection of service charges and user charges, O&M, and dispute resolution
- Rights: assured water supply, control over allocated water, entitlement from canals and right to use groundwater in command area

### Limitations of WUA laws

- Adoption of uniform model of WUAs; diversity of conditions in different states is not considered
- Limited understanding of decentralisation and participation
  - WUAs are separate from democratically elected PRIs
  - Water users who are not landowners are excluded from WUAs
  - Farmers' participation is limited to collection of water rates and recovery of O&M costs; maintenance works
  - Farmers have little say on many aspects of local decision-making, such as allocation of surface water sources across different uses

The implementation of the WUA laws is also hindered due to:

- Inadequate information sharing between government departments (irrigation and revenue) and WUAs
- Reluctance of bureaucracy to surrender powers and functions to farmers

### ISSUES FOR FURTHER ACTION

- Delink water rights from land rights
- Promote participation of farmers and PRIs at all levels of decision-making and implementation
- Improve accountability and transparency of WUAs

### 3.5 Groundwater

Groundwater is an important source of freshwater in India. It accounts for around 58 percent of the total irrigated area and satisfies around 80 percent of drinking water need.<sup>12</sup> However, owing to indiscriminate exploitation, depletion and contamination of groundwater has become a serious problem in almost all parts of India. The need for regulation of groundwater was recognised in the **National Water Policy 1987** (revised in 2002).

#### *Who Controls Groundwater?*

The government exercises control over surface water for, and on behalf of, the people [see sections on *Irrigation* and *Public Trust Doctrine*]. The question to what extent the government can control groundwater was taken up by the High Court of Kerala [see *Box Q*].<sup>13</sup>

#### **BOX Q: Plachimada and Coca-Cola Case**

- The Gram Panchayat of Plachimada village in the State of Kerala decided not to renew the exploitation license granted to the Coca Cola Company because of the lowering of the water table and decreasing water quality. The panchayat also ordered the closure of the plant on the ground that over-exploitation of water had resulted in acute shortage of drinking water.
- The Company challenged the panchayat's authority before a Single Judge of the High Court of Kerala.
- Legal issues: (i) right of a landowner to extract groundwater from his land; (ii) power of the panchayat (or local bodies in general) to regulate the use of groundwater by private individuals
- The Single Judge observed that even without groundwater regulation, the existing legal position was that groundwater is a public trust and the state has a duty to protect it against excessive exploitation. A link was made between public trust and the right to life. The Single Judge recognised that a system which leaves groundwater exploitation to the discretion of landowners can result in negative environmental consequences.
- The parties appealed to the Division Bench of the High Court against different parts of the Single Judge's order.
- The Division Bench asserted the primacy of landowners' control over groundwater in the absence of a specific law prohibiting extraction.

The issue is not yet resolved and the appeal against the decision of the High Court of Kerala is pending before the Supreme Court. It is important to mention that the exercise of government control over groundwater does not mean that individuals lose all their rights over groundwater. Government control only restricts the right of individual landowners to exploit groundwater. The purpose is to avoid indiscriminate exploitation of groundwater which causes harm to people and the environment.

## Institutions

Table 13 lists the Central and state government institutions with responsibilities relating to groundwater.

TABLE 13

Institution		Responsibilities
Central Groundwater Board	Established under the Ministry of Agriculture in 1972 and now a subordinate office in the Ministry of Water Resources	Investigate, explore, develop and manage groundwater
Central Groundwater Authority (CGWA)	Established pursuant to the directions of the Supreme Court in <i>M.C. Mehta v. Union of India</i> <sup>14</sup> [see Notification establishing CGWA]	Regulate and control management and development of groundwater resources; identify critical/ over-exploited areas for regulation and control; issue policy guidelines to state governments to take measures for development and augmentation of groundwater
State Groundwater Boards		Regulate and control management and development of groundwater resources; identify critical/ over-exploited areas for regulation and control

## Laws

Groundwater regulation is necessary to prevent its depletion and contamination. It is also required to augment the resource and restore its quality. The existing laws relating to groundwater mainly comprise common law, and groundwater laws at the state-level.

### Common Law

Common law refers to law developed by English judges through court decisions. Under common law, groundwater is considered as part and parcel of the land. As a result, landowners have an uncontrolled right to extract groundwater. This rule is also reflected in some laws dealing with land rights.<sup>15</sup> This common law rule was endorsed by courts during the pre-independence period,<sup>16</sup> and it continues to determine rights over groundwater in India.

The continuing application of this common law rule is inappropriate because:

- [i] The rule ignores the nature and depth of groundwater aquifers, and that the shape and spread of groundwater aquifer has no relation to the property boundaries of the land.
- [ii] The rule evolved when the knowledge of groundwater hydrology was minimal or nil. The possibility of over-extraction



was limited and legal regulation was not required. These reasons have now become obsolescent.

- [iii] The rule does not take into account the adverse implications of over-exploitation and contamination of groundwater on the enjoyment of the right to pollution-free water, which is a part of the fundamental right to life.
- [iv] The rule is only concerned with rights of landowners over groundwater. It does not accommodate the rights of landless people.

### **Groundwater Laws**

State governments are responsible for the regulation and control of groundwater resources, including their use, conservation, management and development. In order to provide guidance to state governments, the Ministry of Water Resources drafted the Model Bill to Regulate and Control the Development and Management of Groundwater (the 'Model Bill') in 1970, which was revised in 1992, 1996 and last in 2005, and circulated to the states. The main features of the Model Bill are:

- Establishment of a state Groundwater Authority under direct control of the State government<sup>17</sup>
- Regulation of every groundwater user in notified area
- Registration of existing groundwater uses in notified areas and of all wells, even in non-notified areas
- Power of authority to grant or refuse, alter, amend or vary the terms of, or cancel permit/ license to groundwater users in notified area

Since 2002, some states have introduced separate laws to regulate and conserve groundwater resources.<sup>18</sup> These laws extend state control over groundwater use by imposing registration of groundwater infrastructure, introducing permits for groundwater extraction in over-exploited regions and licensing requirements. *Box R* includes a list of these state-level groundwater laws.

**State governments are responsible for the regulation and control of groundwater resources**

### **Limitations of Groundwater Laws**

- Application to particular geographical areas specified as notified areas
- Access to groundwater linked to land; non-landowners/ occupiers are excluded
- Continuance of existing groundwater users
- Absence of specific prioritisation of uses

## BOX R: STATE-LEVEL GROUNDWATER LAWS

### General groundwater laws

- Andhra Pradesh Land, Water and Trees Act, 2002
- Bihar Groundwater (Regulation and Control of Development and Management) Act, 2006
- Delhi Groundwater Regulation Direction, 2010
- Goa Groundwater Regulation Act, 2002
- Himachal Pradesh Groundwater (Regulation and Control of Development and Management) Act, 2005
- Karnataka Ground Water (Regulation and Control of Development and Management) Act, 2011
- Kerala Groundwater (Control and Regulation) Act, 2002
- Lakshadweep Groundwater (Development and Control) Regulations, 2001
- Puducherry Groundwater (Control and Regulation) Act, 2002
- Tamil Nadu Groundwater (Development and Management) Act, 2003
- West Bengal Groundwater Resources (Management, Control and Regulation) Act, 2005
- Maharashtra Groundwater (Development and Management) Bill, 2009
- Uttar Pradesh Groundwater Conservation, Protection and Development (Management, Control and Regulation) Bill, 2010

### Laws focusing on drinking water aspects of groundwater

- Karnataka Groundwater (Regulation for Protection of Sources of Drinking Water) Act, 1999
- Madhya Pradesh Peya Jal Parirakshan Adhiniyam, 1986
- Maharashtra Groundwater (Regulation for Drinking Water Purposes) Act, 1993

- Limited concern for sustainability of groundwater use
- Continuance of sectoral treatment of surface water and groundwater<sup>19</sup>
- Power to notify/ denotify area vests with state government - groundwater authorities only have advisory power – no public participation
- Institutional multiplicity - other authorities are already involved in groundwater regulation - overlapping mandates with CGWA/ State Pollution Control Boards (SPCBs)

In addition to state-level groundwater laws, some metropolitan areas have enacted additional laws relating to groundwater extraction. These include the **Chennai Metropolitan Area Groundwater (Regulation) Act, 1987**.

### Conservation

Some of the state groundwater laws have incorporated the objectives of water conservation and development.

- **Kerala Groundwater (Control and Regulation) Act, 2002:** The preamble recognises the need for conservation.

- **Andhra Pradesh Land, Water and Trees Act, 2002:** The title of the law indicates the emphasis on ‘protection and conservation’.

However, these laws do not require the landowners to use groundwater in an environmentally sustainable manner.

Rainwater harvesting is one of the major strategies to conserve and augment groundwater resources. In the absence of a comprehensive legal framework, legal provisions addressing rainwater harvesting are found in different water-related policies and laws [see Box S].

#### **BOX S: Policies and Laws on Rainwater Harvesting**

##### **POLICIES**

- o National Water Policy 2002 (para 3(2))
- o Karnataka State Water Policy 2002 (section 6(21))
- o Orissa State Water Policy 2007 (para 9.2)

##### **LAWS**

- o Model Groundwater Bill 2005 (section 19)
- o Municipal laws: Tamil Nadu Municipal Laws Second Amendment Act, 2003
- o Groundwater laws: Bihar Groundwater (Regulation and Control of Development and Management) Act, 2006 (section 18)
- o Building regulations: Kerala Municipality Building Rules, 1999 (rule 109A)
- o Laws concerning parastatal bodies: Bangalore Water Supply and Sewerage Act, 1964 (section 72(a))
- o Water regulatory authority acts: Uttar Pradesh Water Management and Regulatory Commission Act, 2008 (section 12(m))

#### **Link between Electricity and Groundwater**

Electricity is the major source of power used to extract groundwater, particularly for irrigation. Free or subsidized electricity results in over-exploitation of groundwater and pricing of electricity is being advanced as a solution to this problem. The **Electricity Act, 2003** has made it challenging to supply free or flat tariff electricity. This Act prohibits any preference to any consumer of electricity. However, such pricing may adversely affect the poor and vulnerable classes, for example, by making agriculture unaffordable for marginal farmers. The market-based pricing of electricity may also affect the realization of the fundamental right to water by making it difficult to use power to extract groundwater for drinking and other domestic purposes. This situation necessitates government subsidy for a particular class of consumers of electricity (e.g. domestic consumers and marginal farmers).

The market-based pricing of electricity may also affect the realization of the fundamental right to water

Having recognised the adverse implications of the existing groundwater laws, Planning Commission is spearheading the drafting of a new Model Groundwater Bill. For details, see section 5.3 below.

#### ISSUES FOR FURTHER ACTION

- Circulation of the new model groundwater bill by the Central government
- Implementation of the new model groundwater bill by the states either by making changes in the existing law or enacting a new law
- Implementation and monitoring of rainwater harvesting

...to insulate water regulation from politics and vested political interests.

### 3.6 Regulatory Authorities

Though in a nascent stage, regulatory authorities constitute an important part of institutional reforms in India. They are autonomous in their day-to-day administration; yet they remain accountable to the government and ultimately to the State Legislature. They are responsible for balancing the interests of users and the market. Examples include the Securities and Exchange Board of India, the Telecom Regulatory Authority of India and State Electricity Regulatory Commissions. More specifically, the institutional reforms in the electricity sector have provided the broad model for the new water regulatory authorities in India.

The establishment of state-level regulatory authorities constitutes a key change in the institutional framework of the water sector. The rationale is to insulate water regulation from politics and vested political interests. The regulatory authorities are supposed to take over some of the functions of states. The earliest initiative was the **Andhra Pradesh Water Resources Development Corporation Act, 1997**, which led to the establishment of a new water corporation. However, the corporation was headed by a minister and its members were mostly from the government. Therefore, it cannot be considered as an example of complete de-politicisation of water regulation.

The Maharashtra Water Resources Regulatory Authority (MWRRA) was established as an independent regulatory authority under the **Maharashtra Water Resources Regulatory Authority Act, 2005**. MWRRA is supposed to regulate water resources within the state, facilitate and ensure judicious, equitable and sustainable management, allocation and utilization of water resources, and fix

the rates for use of water for agriculture, industrial, drinking and other purposes, etc. Separation from the executive branch of the government is a pre-requisite for the independent functioning of the regulatory authority. Therefore unlike the Andhra Pradesh water authority, MWRRA is headed by a retired bureaucrat and consists of a panel of experts. However, the authority is limited to surface water sources; groundwater sources are excluded.

The powers and functions of MWRRA include:

- Regulate water use
- Promote efficient water use, minimize wastage and fix reasonable use criteria
- Allocate specific quantity of water to specific users or groups of users according to availability
- Establish a water tariff system and fix criteria for water charges based on the full cost recovery principle
- Delink control over land and water to facilitate tradeable water rights

Following the establishment of MWRRA, some states have enacted similar laws to establish state-level water resources management/regulatory authorities [see Box T].

#### **BOX T: Water Regulatory Authority Laws**

- Arunachal Pradesh Water Resources Management Authority Act, 2006
- Andhra Pradesh Water Resources Regulatory Commission Bill, 2009
- Uttar Pradesh Water Management and Regulatory Commission Act, 2008 (also regulates groundwater resources)

#### **ISSUES FOR FURTHER ACTION**

- Public participation in decision-making process
- Accountability to the public
- Protecting the interests of poor and disadvantaged groups
- Address water quality and water conservation issues
- Implication of water entitlements on implementation of the right to water

While independent water regulatory authorities are a recent addition to the institutional framework, a number of institutions at the level of the Central government and state governments are responsible for the regulation of water. **Annex II & Annex III** provide an indicative list of such Central government and state government institutions respectively.



# 4

## RATIONALE AND IMPLICATIONS OF CHANGING WATER LAWS & POLICIES

Over the years, water laws and policies in India have undergone a number of changes. Section 3 above has highlighted some of these changes. This section explores the rationale for, and the implications of, these changes.

### 4.1 Rationale for Reforms

This section primarily discusses the rationale for water sector reforms in India. It is pertinent to mention that water law reforms form a part of water sector reforms.

#### 4.1.1 Conservation

Environmental concerns, such as water scarcity and water pollution, form the basis of the reforms. In practice, however, the ongoing reforms predominantly focus on cost recovery and financial sustainability rather than ensuring conservation and protection of water resources.

#### 4.1.2 Global Influences

##### Dublin Principles

The **Dublin Statement**, which represents a key outcome of the International Conference on Water and the Environment 1992, expressly promotes the idea of water as an economic good [see Box U].

##### BOX U: Dublin Principles

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

The water sector reforms in India have been heavily influenced by the fourth Dublin principle.

### Role of International Financial Institutions

International Financial Institutions (IFIs), such as the World Bank and the Asian Development Bank, have paved the course of water sector/law reforms.

- **Law Conditionality:** A number of state governments have borrowed money for projects in the water sector. IFIs have taken advantage of their superior bargaining position to impose introduction of new, or amendment of existing, water laws and policies as conditions for loan disbursements. This practice is known as law conditionality. *Box V* highlights two World Bank projects involving law conditionality.

#### **BOX V: World Bank's Law Conditionality**

- **Uttar Pradesh Water Sector Restructuring Project (2002-2011):** The State government was required to set up a Water Tariff Regulatory Commission and prepare a draft legislation specifying the functions and responsibilities of the Regulatory Commission. This led to the adoption of the Uttar Pradesh Water Management and Regulatory Commission Act, 2008.
- **Madhya Pradesh Water Sector Restructuring Project (2004-2012):** The State government was required to adopt legislation to establish the State Water Tariff Regulatory Commission.

- **Engagement of Consultants:** In some cases, state governments have engaged the services of IFI-approved consultants in the drafting of water laws. For example, the World Bank-approved consultant, Price Waterhouse Coopers, drafted the Delhi Water and Wastewater Reforms Bill, 2004 as part of the Delhi Water Supply and Sewerage Project.

### 4.1.3 Domestic Reasons for Reforms

The existing water laws are largely outdated and insufficient to address new challenges. For instance, irrigation laws are based on laws developed during the colonial period.

The traditional  
land rights-based  
framework...deprives  
access to water

The traditional land rights-based framework that grants rights over surface water and groundwater to landowners or occupiers deprives access to water to large (and vulnerable) sections of the population and leads to overexploitation of the resource. The legal framework has also failed to regulate the use of mechanized pumping devices (which were previously unavailable), which has led to a dramatic increase in groundwater use and contributed to its depletion and contamination.



## 4.2 Implications of Reforms

This section provides an overview of the implications of the reform process.

### 4.2.1 Water as an Economic Good

Water is no longer perceived as a social right to be provided by the government. It is viewed as an economically valuable and finite good [see Box W].

#### **BOX W: Water as an Economic Good – What does it mean?**

- Water pricing - a price is attached to all water services
- Full-cost recovery - providers of water services can pass all costs of water supply onto consumers
- Water as a tradable good - rights over water can be traded
- Shrinking role of government – from provider of water services to facilitator of provision of water services by other entities

This may lead to the denial of access to water for those lacking the financial capacity to pay for water or the weaker sections of society. This may also result in higher water use because private actors may encourage water users to use more rather than less water where the capital costs of investments are to be recovered through user charges.

### 4.2.2 Decentralisation

The reforms conceive a very limited form of decentralisation. In irrigation law reforms, for example, decentralisation has translated into formation of local water user associations (comprising of landowners), rather than giving more powers and resources to democratically elected/ constituted bodies (village panchayats and gram sabhas).

### 4.2.3 Participation

Water law reforms limit participation to the tail-end of the process rather than democratising the decision-making process. Under irrigation law reforms as well as rural drinking water schemes, for example, community participation translates into few rights and several responsibilities. The users/ beneficiaries of the schemes only include the people who pay part of the capital costs of the schemes. Therefore, they only represent a small segment of the public.

**Water law reforms limit participation to the tail-end of the process**

#### 4.2.4 Private Sector Participation

Private sector participation is encouraged, particularly for urban water supply, as a means to ensure more efficient management and delivery of water services, and to provide the necessary investment. Private sector participation can take different forms [see Box X].

##### **BOX X: Different Types of Private Sector Participation**

- Privatisation: This involves the complete or partial transfer of ownership (assets) from the government to a private company.
- Public-private partnerships: The government retains ownership of assets and major responsibilities while certain responsibilities are transferred to private companies for a specified period.
- Corporatization and commercialization of operations of public utilities: The provision of water supply is dissociated from other services administered by the public utility and market principles (such as full cost recovery) are imposed on the operation of water services.
- Privatisation of water resources: In some cases, water resources (such as rivers) themselves have been privatised or sold to private parties.

The State of Chhattisgarh permitted a private company to build a dam over the river Sheonath to provide water to users and assert rights over fishing in the area close to its dam. The issue became controversial as the company began to stop farmers living near the river from pumping water from the river.

A number of policy documents promote and/ or provide the basis for private sector participation in water supply in particular and all other municipal services generally. Annex IV highlights the relevant provisions of some of these documents and a case of public-private partnership in the urban water sector from the State of Tamil Nadu.

The water law and policy framework is constantly evolving. This section highlights some of the ongoing legislative initiatives concerning water.

### 5.1 Framework Water Law

Lawmakers have taken note of the absence of a comprehensive law relating to water and efforts are underway to fill this gap. Planning Commission (Government of India) has prepared a new model framework water law. The features of the proposed law include:

- Explicit recognition of the fundamental human right to water
- Declaration of water as a public trust
- Prioritisation of water allocation
- Emphasis on water quality
- Emphasis on decentralisation and participation as guiding principles of institutional framework

### 5.2 National Water Policy 2012 (Draft)

The Government of India is conducting a review of the **National Water Policy 2002**. A draft of the revised National Water Policy was published on the Ministry of Water Resources website in January 2012. It has been poorly received among civil society organizations.

### 5.3 Model Groundwater Bill

Having recognised the adverse implications of the existing groundwater laws, Planning Commission has prepared a new Model Groundwater Bill addressing the flaws of the existing groundwater laws. ELRS is involved in this process.

The Model Groundwater Bill envisages various fundamental changes in the groundwater laws, which include:

- Declaration of groundwater as a public trust and preventing it from becoming a natural resource in private control
- Emphasis on conjunctive use and management of surface water and groundwater
- Explicit recognition of the fundamental right to water
- Protection of groundwater recharge and discharge zones
- Demarcation and declaration of groundwater protection zones with varying degrees of protection and regulation

Planning  
Commission has  
prepared a new draft  
Model Bill for State  
Water Regulatory  
System.

- Decentralised management, regulation and protection of groundwater with community participation through groundwater security plans
- Prioritisation of water uses with water for life and livelihood as top priorities
- Mandatory social and environment impact assessment of projects
- Mandatory social audits at the local level of all activities related to groundwater
- Resolution of groundwater related disputes at the local level

#### 5.4 Water Regulatory Authorities

The government also acknowledges the need to overhaul the existing water regulatory authority laws. For this purpose Planning Commission has prepared a new draft Model Bill for State Water Regulatory System. The key features of the bill are:

- Instead of a state level regulatory authority, different agencies to set policies, to regulate and to exercise quasi-judicial functions.
- Decentralisation of water sector governance to four levels: (i) state-level, (ii) river basin level (iii) sub-basin level (iv) local level
- A multi-structured state-wide grievance redressal system
- Areas of regulation include water access, extraction, and use; execution of projects and programs; water service provisioning; allocation of financial and other resources to projects; environmental sustainability; disaster management; private sector participation; Integrated State Water Plan; and climate change
- Follow the standard procedures for ensuring participation in preparation and promulgation of the decisions

Changes are also taking place in the direction of the development of urban regulatory authorities at the state level. For instance, in October 2011, the Government of Delhi announced its plan to revamp the entire water management and distribution system in Delhi under the guidance of Planning Commission. This includes a proposal to create a 'new administrative regime' involving an urban water regulatory body on the lines of the Delhi Electricity Regulatory Commission to streamline the water management system and to fix water tariffs.

## 5.5 Access to Information and Remedies

The Right of Citizens for Time Bound Delivery of Goods and Services and Redressal of their Grievances Bill, 2011 has been introduced in Lok Sabha on 20 December 2011. The Bill makes it mandatory for

- every public authority to publish a Citizen's Charter, which shall
- a. List the details of the goods and services provided by a public authority;
  - b. The name of the person or agency responsible for its provision;
  - c. The time frame within which goods or services have to be provided;
  - d. The category of people entitled to the goods and services; and
  - e. Details of the complaint redressal mechanism.

In the context of this Bill, the term "service" means all the goods and services, including functions, obligations, responsibility or duty, to be provided or rendered by a public authority. This would include water services. By making the publication of the Citizen's Charter compulsory, the proposed Bill provides citizens with access to information about water services. Further, anyone with a complaint regarding the provision of a water service by a public authority can make use of the redressal mechanism.

For an overview of some of the existing access to justice laws in India, see section 6 below.



**Laws** relating to water have a procedural and substantive dimension. What this means is that in addition to the ‘substance’ of the laws (such as rights of individuals and responsibilities of the government), certain procedural elements are critical for the implementation of laws. The relevant procedural rights are: access to information, public participation in the decision-making process, and access to courts for remedies. The legal system in India includes specific mechanisms for the first and third procedural rights.

### 6.1 Access to Information

Access to information about the law/ reform and their essential features is required to ensure transparency and accountability. Under the **Right to Information Act, 2005**, citizens have the right to access information held by or under the control of a public authority [see Box Y]. The Act defines the terms ‘information’ and ‘public authority’.<sup>20</sup> However, the right to information is not absolute. Certain categories of information are exempt from disclosure, unless their disclosure is in public interest.

#### **BOX Y: Procedure for Seeking Information under the Right to Information Act, 2005**

- Form of application: written in Hindi, English or official language of area
- Details to be furnished: applicant’s name and complete postal address
- Details NOT to be furnished: reasons for seeking information
- Relevant authority: designated Public Information Officer of public authority
- Submission of application: post, electronic means or personal delivery
- Application fee: prescribed; payable in cash or through a demand draft or a banker’s cheque or an Indian Postal Order payable to Accounts Officer of public authority
- The applicant may be required to pay further fee for the information.
- Non-payment of fee in some cases: applicant below the poverty line or if information is provided after the prescribed 30-day period
- For more information, visit website of public authority or [www.rti.gov.in](http://www.rti.gov.in)

Civil society organisations have invoked the right to information, for example, to draw attention to the external pressures that are shaping the water sector reforms [see Box Z].

#### **BOX Z: Right to Information and Water Sector Reforms**

In Delhi, activists, led by a NGO called Parivartan, used the Delhi Right to Information Act, 2001 to seek information about the World Bank's Delhi Water Supply and Sewerage Project. The resulting disclosure of information about the involvement of the World Bank in the appointment of Price Waterhouse Coopers as a consultant led to intense public criticism of the project. Finally, the Delhi government withdrew its loan application to the World Bank and the project has been dropped.

## **6.2 Access to Remedies**

Any individual or organisation can approach a High Court or the Supreme Court of India in case of a violation of a fundamental right. This would include the fundamental right to water, which forms part of the right to life under Article 21 of the Constitution of India [see Box AA]. This mechanism is referred to as public interest litigation and the individual or organisation approaching the court need not be the affected party.

#### **BOX AA: Access to Remedies: *Vishala Kochi Kudivella Samara Samithi v. State Of Kerala***

The people of West Kochi, Kerala had been demanding supply of potable drinking water for more than three decades. Having not received any attention, they approached the High Court of Kerala. The High Court recognised the fundamental right to water of the people and directed the government to take and complete all steps necessary for supplying drinking water within six months.

The **Water (Prevention and Control of Pollution) Act, 1974** and the **Environment (Protection) Act, 1986** impose certain obligations on the Central Pollution Control Board (CPCB) and the SPCBs. In the event that these bodies fail to take appropriate measures to prevent pollution, individuals/organisations may approach the National Green Tribunal (established under the **National Green Tribunal Act, 2010**) or a High Court or the Supreme Court by filing a public interest litigation.

Water laws provide certain rights to the public and impose certain responsibilities on the authorities. However, the effectiveness of these rights and responsibilities depends on the availability of a proper judicial mechanism in case of violation of these rights or non-observance of responsibilities by the authorities. Unfortunately, while the authorities can invoke the penal provisions that are included in some of the water laws to punish offenders, there is little by way of a judicial mechanism that allows the public to seek



a remedy for the violation of their rights (by the authorities) with respect to provision of water services etc. For example, most of the municipal laws include a provision authorising the municipal body to take action against people for misuse of water. At the same time, there is no provision empowering the people to take legal action against the municipal body for non-availability of water or for poor water quality. One notable exception is the **Uttar Pradesh Water Management and Regulatory Commission Act, 2008** which includes offences by the utility responsible for the management, treatment and distribution of water within its purview.

The **Madhya Pradesh Public Service Guarantee Act, 2010** guarantees the delivery of basic public services (including drinking water connections) to citizens within a stipulated time frame and sets in place accountability mechanisms for non-delivery of services. If officials fail to perform their duties and provide these services on time, they will have to pay a fine starting from Rs. 250 per day to a maximum of Rs. 5000. In the event that citizens do not receive notified services in time, the Act provides a redressal mechanism.

The Government of India is also considering a law to ensure the timely delivery of public services and to provide a redressal mechanism [see section 5.5 above].

Government  
of India is also  
considering a law  
to ensure the timely  
delivery of public  
services

## NOTES

- 1 Judgments do not reflect day-to-day practice in the exercise of rights. They constitute a final recourse to protect or uphold rights through specific litigious action, on a case-by-case basis.
- 2 Local law or customary law incorporates locally evolved norms, institutions and behaviour.
- 3 (1997) 1 SCC 388
- 4 *See M.I. Builders Pvt. Ltd. v. Radhey Shyam Sahu*, AIR 1999 SC 2468; *State of West Bengal v. Kesoram Industries*, (2004) 10 SCC 201; *Intellectual Forum, Tirupathi v. State of Andhra Pradesh*, (2006) 3 SCC 549 and *Karnataka Industrial Areas Development Board v. C. Kenchappa and Others*, AIR 2006 SC 2038.
- 5 For panchayats, see Article 243G read with Eleventh Schedule, Entry 11 and for municipalities, see Article 243W read with Twelfth Schedule, Entry 5 of the Constitution of India.
- 6 Swajal introduced a demand-driven approach for drinking water in rural areas. The important features included user participation, cost recovery, creation of Village Water and Sanitation Committees and change in the role of government – from provider to facilitator. Swajal was implemented between 1996 and 2002.
- 7 Urban Local Bodies are classified into Municipal Corporations, Nagar Palika Parishads and Nagar Panchayats, depending on the size of the population.
- 8 The Bureau of Indian Standards (BIS) is the national agency responsible for developing guidelines for drinking water quality standards in India.
- 9 Seventh Schedule, List II, Entry 6, Constitution of India
- 10 Article 243G read with Entry 23, Eleventh Schedule, Constitution of India
- 11 Some laws also provide for a state committee at the state level. For example, see Orissa Pani Panchayat Act, 2002 (section 9).
- 12 Planning Commission of India, Report of the Expert Group on 'Groundwater Management and Ownership' (Delhi: Government of India, Planning Commission, 2007).
- 13 *See Perumatty Grama Panchayat v. State of Kerala*, 2004 (1) Kerala Law Times 731 (decision of the Single Judge) and *Hindustan Coca-Cola Beverages (P) Ltd. v. Perumatty Grama Panchayat*, 2005 (2) Kerala Law Times 554 (decision of the Division Bench).
- 14 (1997) 11 SCC 312
- 15 *See Indian Easements Act, 1882, section 7, illustration (g).*
- 16 *Karathigundi Keshava Bhatta v. Sunnanguli Krishna Bhatta*, AIR 1946 Madras 334.

- 17 The West Bengal Groundwater Resources (Management, Control and Regulation) Act, 2005 provides for a decentralised institutional mechanism by setting up groundwater regulatory authorities at the state, district and corporation levels.
- 18 The State governments of Nagaland, Sikkim, Tripura, Punjab, Chandigarh, Manipur and Arunachal Pradesh do not consider it necessary to enact separate groundwater legislation.
- 19 The Andhra Pradesh Land, Water and Trees Act, 2002 directly links surface water and groundwater in the context of environmental conservation but it continues to address groundwater in the same manner as other laws.
- 20 'Information' is defined as any material in any form and includes information relating to any private body which can be accessed by the public authority under any law in force.  
'Public authority' means any authority or body or institution of self-government established or constituted by or under the Constitution; by any other law made by Parliament or State Legislature; or by notification issued or order made by the appropriate Government (which includes any body owned, controlled or substantially financed; and non-Government organisation substantially financed, directly or indirectly by funds provided by the appropriate Government).

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# ANNEXES

## ANNEX I: Relevant Provisions in the Constitution of India

### DIVISION OF POWERS

CENTRAL GOVERNMENT	
Power to regulate and deal with inter-state rivers and river valleys [Article 246 read with Seventh Schedule, List I, Entry 56]	<p>River Boards Act, 1956</p> <ul style="list-style-type: none"> <li>• Framework for the establishment of river boards by the Central government to advise state governments concerning the regulation or development of an inter-state river or river valley</li> </ul>
Power to frame laws on subjects that are not within its powers, if two or more State legislatures decide that the Centre should pass such laws [Article 252]	<p>Water (Prevention and Control of Pollution) Act, 1974</p> <ul style="list-style-type: none"> <li>• Elaborate administrative scheme through a licensing system to prevent and protect against water pollution and maintain and restore the wholesomeness of water</li> <li>• CPCB and SPCBs set standards and regulations to prevent and control pollution</li> </ul>
Power to frame laws to resolve inter-state water disputes [Article 262]	<p>Inter-State River Water Disputes Act, 1956</p> <ul style="list-style-type: none"> <li>• Establishment of specific tribunals to adjudicate inter-state river disputes that have not been solved through negotiations</li> </ul>
STATE GOVERNMENTS	
<p>Article 246 read with Seventh Schedule, List II</p> <ul style="list-style-type: none"> <li>• Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power [Entry 17]</li> <li>• Public health and sanitation [Entry 6]</li> </ul>	
LOCAL BODIES	
<p><b>Panchayati Raj Institutions</b></p> <p>Articles 243G read with Eleventh Schedule</p> <ul style="list-style-type: none"> <li>• Minor irrigation, water management and watershed development [Entry 3]</li> <li>• Drinking water [Entry 11]</li> <li>• Health and sanitation . . . [Entry 23]</li> </ul>	
<p><b>Urban Local Bodies</b></p> <p>Article 243W read with Twelfth Schedule</p> <ul style="list-style-type: none"> <li>• Water supply for domestic, industrial and commercial purposes [Entry 5]</li> <li>• Public health, sanitation conservancy and solid waste management [Entry 6]</li> </ul>	

## RIGHTS AND DUTIES

PART III: FUNDAMENTAL RIGHTS	
Article 14	The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.
Article 15(2)	No citizen shall on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to the use of wells, tanks, bathing ghats...
Article 21	No person shall be deprived of his life or personal liberty except according to procedure established by law.
PART IV: DIRECTIVE PRINCIPLES OF STATE POLICY	
Article 37	The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.
Article 39(b)	The State shall, in particular, direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common good.
Article 47	The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties.
PART IV A: FUNDAMENTAL DUTIES	
Article 51(A)(g)	It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers, wild life and to have compassion for living creatures.

## ANNEX II: Key Central Government Institutions

WATER SUPPLY		SANITATION		IRRIGATION	GROUNDWATER
Urban	Rural	Urban	Rural		
Ministry of Urban Development (CPHEEO)	Ministry of Drinking Water & Sanitation (earlier Department of Drinking Water Supply under Ministry of Rural Development)	Ministry of Urban Development (CPHEEO)	Ministry of Drinking Water & Sanitation (earlier Department of Drinking Water Supply under Ministry of Rural Development)	Ministry of Water Resources	Ministry of Water Resources (Central Groundwater Board)
	Ministry of Rural Development		Ministry of Rural Development	Ministry of Rural Development (Department of Land Resources)	Ministry of Environment & Forests (Central Groundwater Authority)
Ministry of Water Resources					
Ministry of Health & Family Welfare					
Planning Commission					

### ANNEX III: Representative List of Key State Institutions

	WATER SUPPLY		SANITATION		IRRIGATION	GROUNDWATER
	Urban	Rural	Urban	Rural		
Andhra Pradesh	Public Health Engineering Department (PHED), Municipal Administration and Urban Development Department & Hyderabad Water Supply and Sanitation Board (HWSSB)	Panchayat Raj and Rural Development (Department of Rural Development)	PHED, Municipal Administration and Urban Development Department & HWSSB	Panchayat Raj and Rural Development (Department of Rural Development)	Irrigation and Command Area Development (CAD) Department	Irrigation and Command Area Development (CAD) Department
Arunachal Pradesh	PHE & Water Supply Department	PHE & Water Supply Department	PHE & Water Supply Department	PHE & Water Supply Department	Water Resources Department (WRD)	Water Resources Department (WRD)
Assam	Assam Urban Water Supply and Sewerage Board (AUWSSB)	PHED	AUWSSB	PHED	Irrigation Department	Irrigation Department
Bihar	PHED	PHED	PHED	PHED	WRD	WRD
Chhatisgarh	PHED	PHED	PHED	PHED	WRD	WRD
Delhi	Urban Development Department, Delhi Jal Board (DJB), New Delhi Municipal Council (NDMC) and Cantonment Board		Urban Development Department, DJB, NDMC and Cantonment Board		Department of Irrigation and Flood Control	Department of Irrigation and Flood Control
Goa	Public Works Department (PWD)	PWD	PWD	PWD	Water Resources Department	
Gujarat	Gujarat Water Supply and Sewerage Board (GWSSB) and Urban Development & Housing Department	GWSSB and Panchayats, Rural Housing and Rural Development Department	Urban Development & Housing Department	Commissionerate of Rural Development (CRD) (Panchayats, Rural Housing and Rural Development Department)	Agriculture & Cooperation Department, Irrigation Department and CRD	Gujarat Water Resources Department Corporation Ltd. and Gujarat Groundwater Authority

### ANNEX III: Representative List of Key State Institutions

	WATER SUPPLY		SANITATION		IRRIGATION	GROUNDWATER
	Urban	Rural	Urban	Rural		
Haryana	PWD (Water Supply and Sanitation)	PWD (Water Supply and Sanitation)	PWD (Water Supply and Sanitation)	PWD (Water Supply and Sanitation)	Irrigation Department	Groundwater Cell (Department of Agriculture) and Irrigation Department
Himachal Pradesh	Irrigation and Public Health Department & Urban Development Department	Irrigation and Public Health Department	Irrigation and Public Health Department	Department of Rural Development & Irrigation and Public Health Department	Irrigation and Public Health Department	Groundwater Authority (Irrigation and Public Health Department)
Jammu & Kashmir	PHED	PHED	PHED	PHED	Irrigation and Flood Control Department	PHED
Jharkhand	Drinking Water & Sanitation Department and Urban Development Department	Drinking Water & Sanitation Department	Drinking Water & Sanitation Department	Drinking Water & Sanitation Department	Department of Water Resources	Department of Water Resources
Karnataka	Karnataka Urban Water Supply and Drainage Board (KUWS&DB), Urban Development Department and BWSSB	Rural Development and Panchayat Raj Department	KUWS&DB, Urban Development Department and BWSSB	Rural Development and Panchayat Raj Department	Water Resources Department and Minor Irrigation Department	Department of Mines and Geology
Kerala	Kerala Water Authority (KWA)	KWA	KWA	KWA	Department of Irrigation	Groundwater Department
Madhya Pradesh	PHED	PHED	PHED	PHED	WRD	Groundwater Surveys Department



### ANNEX III: Representative List of Key State Institutions

	WATER SUPPLY		SANITATION		IRRIGATION	GROUNDWATER
	Urban	Rural	Urban	Rural		
Maharashtra	Jalswarajya (Water Supply and Sanitation Department) and Maharashtra Jeevan Pradhikaran & Corporation	Jalswarajya (Water Supply and Sanitation Department) and Maharashtra Jeevan Pradhikaran & Corporation	Jalswarajya (Water Supply and Sanitation Department)	Jalswarajya (Water Supply and Sanitation Department)	WRD	Groundwater Surveys and Development Agency and Water Supply & Sanitation Department
Manipur	PHED	PHED	PHED	PHED	Irrigation & Flood Control Department (IFCD) and Minor Irrigation Department (MID)	MID, PHED and IFCD
Meghalaya	PHED	PHED	PHED	PHED	Department of Water Resources and Irrigation Department	Department of Geology & Mining and Soil & Water Conservation Department
Mizoram	PHED	PHED	PHED	PHED	Minor Irrigation Department	
Nagaland	PHED	PHED	PHED	PHED	Department of Irrigation and Flood Control	Department of Geology & Mining
Orissa	PHED and Orissa Water Supply and Sewerage Board (OWSSB) (Housing & Urban Development Department)	Rural Water Supply & Sanitation Organisation (Rural Development Department)	PHED and OWSSB (Housing & Urban Development Department)	Rural Water Supply & Sanitation Organisation (Rural Development Department)	Department of Water Resources	Groundwater Survey & Investigation Department (Department of Water Resources)

### ANNEX III: Representative List of Key State Institutions

	WATER SUPPLY		SANITATION		IRRIGATION	GROUNDWATER
	Urban	Rural	Urban	Rural		
Punjab	Punjab Water Supply and Sewerage Board (PWSSB) (Local Government Department)	Department of Water Supply & Sanitation	PWSSB (Local Government Department)	Department of Water Supply & Sanitation and Rural Development & Panchayat Department	Irrigation & Power Department	Groundwater Cell (Department of Agriculture) & Water Resources & Environment Directorate (Irrigation & Power Department)
Rajasthan	PHED	PHED	PHED	PHED	WRD	Groundwater Department
Sikkim	Water Security & PHE Department	Rural Development Department	Water Security & PHE Department	Rural Development Department	Irrigation & Flood Control Department	
Tamil Nadu	Tamil Nadu Water and Drainage (TWAD) Board, Municipal Administration & Water Supply Department and MetroWater (Chennai)	TWAD Board and Rural Development & Panchayat Raj Department	TWAD Board and Municipal Administration & Water Supply Department	Rural Development & Panchayat Raj Department	Water Resources Organisation (PWD)	PWD, TWAD Board and MetroWater (Chennai)

### ANNEX III: Representative List of Key State Institutions

	WATER SUPPLY		SANITATION		IRRIGATION	GROUNDWATER
Tripura	PWD (Drinking Water & Sanitation) and Urban Development Department	PWD (Drinking Water & Sanitation)	PWD (Drinking Water & Sanitation)	PWD (Drinking Water & Sanitation)	Department of Agriculture	
Uttar Pradesh	Jal Nigam & Jal Sansthan	Jal Nigam	Jal Nigam	Jal Nigam and Department of Rural Development	Irrigation Department	Groundwater Department
Uttarkhand	Uttarkhand Peyjal Nigam and Jal Sansthan	Uttarkhand Peyjal Nigam and Jal Sansthan	Uttarkhand Peyjal Nigam	Uttarkhand Peyjal Nigam	Irrigation Department	
West Bengal	PHED and Kolkata Metropolitan Water & Sanitation Authority	PHED	PHED and Municipal Administration Department	PHED and Panchayat & Rural Development Department	Irrigation & Waterways Department and Water Investigation & Development Department	Water Investigation & Development Department and PHED

## ANNEX IV: Private Sector Participation

A number of policy documents (at the national and state-level) promote and/or provide the basis for private sector participation (PSP) in water supply in particular and other municipal services generally.

<b>National Water Policy 2002</b>	
para 13	PSP should be encouraged in planning, development and management of water resources projects for diverse uses, wherever feasible. PSP may help in introducing innovative ideas, generating financial resources and introducing corporate management and improving service efficiency and accountability to users. Depending upon the specific situations, various combinations of PSP, in building, owning, operating, leasing and transferring of water resources facilities, may be considered.
<b>JNNURM GUIDELINES 2005</b>	
para 2.10	The optional reforms that need to be implemented at the state level and at the level of para-statal agencies include “encouraging Public-Private Partnership”.
para 3.iii	PSP in development, management and financing of Urban Infrastructure would be clearly delineated.
para. 14.4	Projects with PSP “will be given priority over projects to be executed by Urban Local Bodies/Parastatals themselves, as this will help leverage private capital and bring in efficiencies”.
<b>Model Municipal Law 2003</b>	
section 47(1)(a)(i)	Every Municipality shall provide on its own or arrange to provide through any agency the following core municipal services – water supply for domestic, industrial and commercial purposes.
section 167(a)	[S]ubject to the provisions of any State law relating to planning, development, operation, maintenance and management of municipal infrastructure and services, a Municipality may, in the discharge of its functions specified in section 47 . . . promote the undertaking of any project for supply of urban environmental infrastructure or services by participation of a company, firm, society, trust or any body corporate or any institution, or government agency or any agency under any other law for the time being in force, in financing, construction, maintenance and operation of such project of a Municipality irrespective of its cost.
<b>Karnataka Urban Drinking Water and Sanitation Policy 2003</b>	
Article 51(A)(g)	To improve efficiency in service provision, continuously update technology and ultimately bring in private investment into sector, the GoK will actively encourage private sector participation. Given the current state of the sector, PSP will necessarily have to be gradual. Preparatory work for PSP in the sector like fostering a culture of commercialization, encouraging out sourcing, building local capacity and most importantly identifying and expediting the necessary legislative institutional and regulatory changes that are necessary of PSP will be undertaken in the meanwhile. Given the very different sizes of urban areas in the State, the GoK will allow a range of different PSP methods of Service provision and service providers.

### **PPP in the Tirupur Water Supply and Sanitation Project**

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

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

Following an international competitive bidding process, NTADCL selected a consortium comprising of the Mahindra Group, Bechtel Enterprises and the United Utilities International, UK for the design and construction of the project facilities and their operation and maintenance.

Urban local bodies in several cities have directly entered into partnerships with private companies to undertake some or all of the functions involved in the provision of drinking water. One such example is the Tirupur Water Supply and Sanitation Project in the State of Tamil Nadu.

