

A CONCISE GUIDE TO WATER LAWS IN UTTAR PRADESH



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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The relationship between water and life requires no explanation. Access to sufficient water of good quality determines the quality of life of people. Water is also significant from the development perspective as it is an indispensable input for all economic activities such as industries and agriculture. Despite this, people as well as government think about water issues only when they are affected by its non-availability or bad quality, for instance in case of a drought or an epidemic, or when a conflict arises between different users or uses.

The state of Uttar Pradesh (or UP) is affected by water related issues. Some parts of UP face the problem of water scarcity. For example, Chitrakoot is known for acute non-availability of water. Women and children walk long distances to fetch water. The eastern part of the state (e.g. Ballia) suffers from water quality problems, mainly chemical contamination of groundwater. Some of its rivers (e.g. Ami river in Gorakhpur) have turned into sewage canals mainly due to discharge of untreated wastes from industries. It is not uncommon in UP for small-scale farmers to purchase water from neighbors who own a tube-well and a diesel pump! Water is also a central issue of public movements. For instance, over-exploitation of groundwater by the Coca Cola Company in Mehdiganj in Varanasi district triggered massive public protests.

However, the situation is changing over the years and water is no longer a low priority for the people as well as the state government.

Water law can be a powerful tool in the hands of the people to solve their water problems. On the one hand, the existence of water law itself makes governments responsible and alert; on the other hand, people can approach the court to compel the government to act in case it refuses or fails to perform its duties.

The poor and the vulnerable are immediately and most severely affected by water problems such as non-availability and poor quality. The rich can cope with situations such as water quality problems by investing money in water purifiers. Poor people are left with no option but to use unsafe water which can result in health problems. Therefore, the poor and the vulnerable sections of society are most in need of water laws.

I

WHY DO WE NEED TO THINK ABOUT AND ACT ON WATER ISSUES?

II

WHAT IS THE ROLE OF LAW IN ADDRESSING WATER CONCERNS?

Issues	Law	Solution
Non-availability of drinking water	Fundamental right to water guaranteed under the Constitution	People, individually or collectively, can approach the High Court or Supreme Court to compel the government to fulfil its responsibility to protect their fundamental right to water.
Water pollution	Pollution control laws: Water (Prevention and Control of Pollution) Act, 1974 and Environment Protection Act, 1986	The State Pollution Control Board (SPCB) is authorised to take appropriate measures to control pollution. If the SPCB fails to do so, people can approach the High Court to compel the SPCB to take necessary action.
Contamination of drinking water	There is no law prescribing water quality standards to be followed by water supply agencies or local bodies.	If there is a law making it compulsory for water supply agencies or local bodies to follow water quality standards, people can approach the court to compel the agencies or local bodies to follow the law.

Illustration: Use of law to address drinking water issues

USE OF LAW BY PEOPLE TO OBTAIN SAFE AND SUFFICIENT DRINKING WATER: THE KERALA EXPERIENCE

The people of West Kochi, Kerala have been demanding supply of potable drinking water for more than three decades. Having not received any attention from the government, 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

Source: *Vishala Kochi Kudivella Samrakshana Samithi v. State of Kerala*, 2006, www.ielrc.org/content/e0642.pdf

III DRINKING WATER: WHOSE RIGHT AND WHOSE RESPONSIBILITY?

Drinking water is the most important use of freshwater. It takes priority over all other uses such as irrigation and industrial water. The Supreme Court has clearly said that everyone has a fundamental right to water under the Constitution.

FUNDAMENTAL RIGHT TO WATER

Water is the basic need for the survival of the human beings and is part of right to life and human rights as enshrined in Article 21 of the Constitution of India

Source: *Narmada Bachao Andolan v. Union of India*, Supreme Court, AIR 2000 SC 3715; www.ielrc.org/content/e0008.pdf

A What does it mean to have a fundamental right to water guaranteed under law?

- Availability of sufficient water for all necessary functions to keep life healthy such as cooking, toilet use, personal hygiene and water for livestock;
- Access to safe drinking water;
- No discrimination on the basis of caste, religion and sex in access to water;
- Access to water shall not be affected by the ability to pay of individuals;
- Duty of the government (from village panchayat to the central government) to ensure the availability of clean and sufficient water to all without any discrimination; and
- Duty of the government to ensure that the fundamental right to water is not violated or affected.

B What steps have been taken by the government to ensure fundamental right to water?

Major government schemes for water supply

Rural	Urban
CENTRAL GOVERNMENT	
Swajaldhara	Accelerated Urban Water Supply Scheme (AUWSP)
Accelerated Rural Water Supply Scheme (ARWSP)	Jawaharlal Nehru National Urban Renewal Mission (JNNURM)
National Rural Drinking Water Programme (NRDWP)	Urban Infrastructure Development Scheme for Small and Medium Towns (UIDSSMT)
Provision of Urban Amenities in Rural Areas (PURA)	
Jal Nidhi	
STATE GOVERNMENT	
	Normal Programme (for medium and large size towns)

State laws dealing with water supply

Rural	Responsibility for water supply
Uttar Pradesh Water Supply and Sewerage Act, 1975	UP Jal Nigam
Uttar Pradesh Municipal Corporations Act, 1959	Municipal Corporations
Uttar Pradesh Municipalities Act, 1916	Municipalities
Uttar Pradesh Panchayat Raj Act, 1947	Panchayats

Be aware of your fundamental right to water
 Be proactive in using the right to information to collect information that may affect your fundamental right to water
 Be powerful in challenging actions implicating your fundamental right to water

C Issues for Advocacy

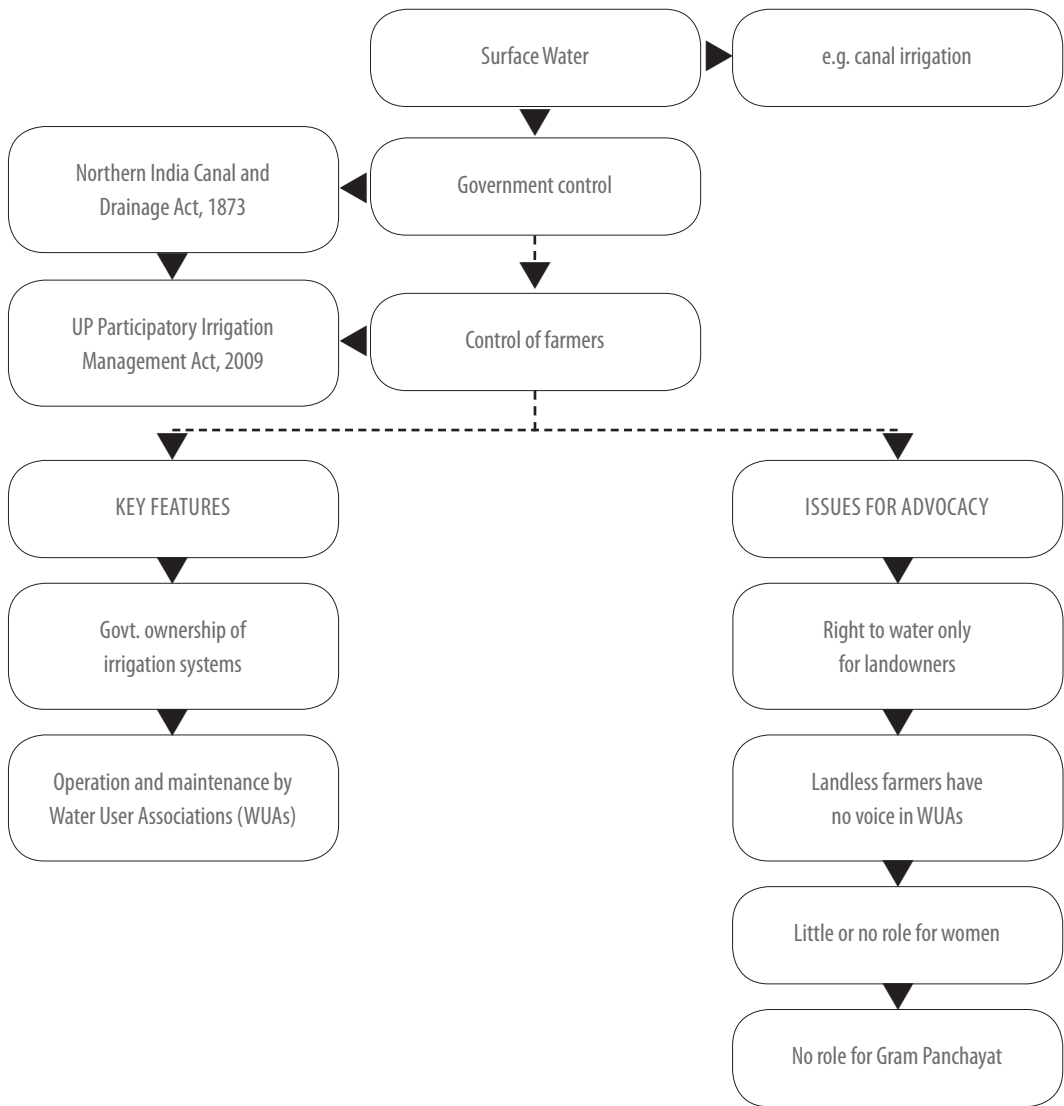
- The government is proposing that everyone will have to pay for drinking water, as well as for the cost of maintenance and repair of water infrastructure. Making access to water dependant on ability to pay must be challenged in the light of the fundamental right to water.
- Private sector participation is being widely promoted as an option to supply water at a price. The implications of this proposal on access to water for poor and vulnerable sections of society must be evaluated.
- Public stand posts/hand pumps are used extensively as a source of water supply in rural as well as urban areas of UP. There is now a proposal to phase out hand pumps and introduce individual piped connections to 90% of rural households in India by 2022. Making water available at everyone's doorstep is a welcome approach. But forcing people to avail of this facility by removing public stand posts and hand pumps will have negative implications on the poor.

IV IRRIGATION: DO ALL FARMERS HAVE A RIGHT TO WATER?

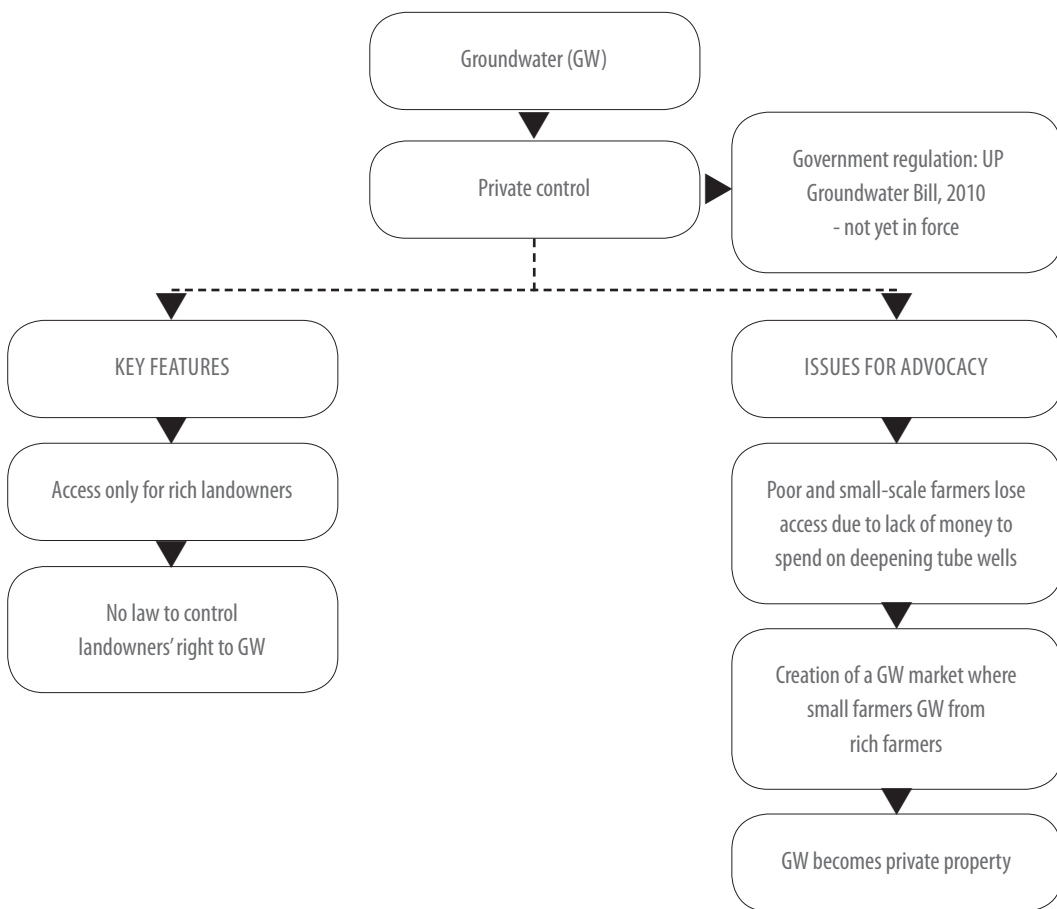
Do farmers have a right to water for irrigation? No. Water resources have always been under the control of the government. Irrigation laws were adopted during British rule mainly for exercising this control. The situation is not different in UP at least since the enactment of Northern India Canal and Drainage Act, 1873. This law allows the government to control water resources for the benefit of the public. Therefore, the irrigation system in UP (approx. 74000 km long canal system and 29,000 tube wells) came under the control of the Irrigation Department.

A Control over Irrigation Facilities: from Government to Farmers

Control over irrigation facilities is being shifted from the government to farmers. The aim of the Uttar Pradesh Participatory Irrigation Management Act, 2009 is to reduce the role of the government and to give powers and responsibilities of use and management of irrigation systems to farmers.



Groundwater (GW) is increasingly becoming a major source of irrigation. But GW is still under the control of landowners because there is no law to control GW extraction by landowners. They also have the financial resources to increase the depth of tube wells and install high capacity pumps for this purpose. Poor and marginal farmers often need to buy GW from such farmers.



V SANITATION: WHOSE RIGHT AND WHOSE RESPONSIBILITY?

Improper and inadequate sanitation is a major challenge in UP. Open defecation is a common practice especially in rural areas of UP. Women are physically attacked while going for defecation in the fields. Land and water sources are being polluted by discharge of untreated wastes. This causes severe health problems and the poor sections of society are the most vulnerable. Deterioration of water and land resources further affects agricultural production.

A Right to Sanitation

Right to sanitation is a part of the fundamental right to life guaranteed under the Constitution. The Supreme Court has said, on more than one occasion, that **everyone has a right to sanitation**.

SANITATION BEYOND TOILETS

Sanitation does not simply mean toilet facilities within or near one's home and working place, public places etc. It also includes:

- Treatment and disposal of human excreta
- Collection and disposal of domestic waste
- Sufficient water to bathe, wash hands, clean houses etc.

Source: Government of India, Total Sanitation Campaign Guidelines, July 2011, <http://www.ielrc.org/content/e1105.pdf>

Right to life with human dignity cannot be enjoyed without sanitation. 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. Situation of improper and inadequate sanitation, therefore, amounts to violation of right to life guaranteed under the Constitution.

Source: *Virendra Gaur v. State of Haryana*, (1995) 2 SCC 577, www.ielrc.org/content/e9407.pdf

B Duty of the Government

It is a duty of the government to provide sanitation facilities such as sewerage, toilets and wastewater treatment plants. It is the legal duty of the local bodies such as the village panchayat or municipality to provide adequate sanitation facilities to all people. The Supreme Court has said very clearly that the local bodies cannot run away from this legal duty.

It is a responsibility of the Government to provide sanitation facilities that is in good condition and sufficient to meet the needs of the people.

Responsible local bodies cannot run away from this responsibility by saying lack of fund.

Source: *Municipal Council, Ratlam v. Vardhichand*, (1980) 4 SCC 162, www.ielrc.org/content/e8010.pdf

C Which laws & policies talk about the responsibility of the government?

Laws

Constitution of India, 1950	It is the duty of the government to improve public health.
Uttar Pradesh Water Supply and Sewerage Act, 1975	It is a duty of the Jal Nigam to work with the government and local bodies to improve sewage system.
Uttar Pradesh Municipal Corporations Adhiniyam, 1959	It is an obligatory duty of the corporation to provide sanitation facilities such as: <ul style="list-style-type: none">• Collection and removal of sewage• Construction, maintenance and cleansing of drains and drainage works, and of public latrines, water-closets and urinals
Uttar Pradesh Panchayat Raj Act, 1947	One of the functions of the Gram Panchayat is to promote rural sanitation.

Policies

Earlier the government tried to provide sanitation facilities (such as toilets) and subsidies were given to the public. However, this strategy has been replaced with the demand-oriented approach. The government will now focus on educating people about the value and benefits of sanitation. It is expected that this will eventually lead to people taking up initiatives themselves. It is also believed that the new strategy will provide better long term results.

D Issues for Advocacy

- Government cannot ignore its duty to provide sanitation.
- No sanitation or improper sanitation amounts to violation of right to life.

Sanitation is your right...

You have the right to know what measures the government has taken so far...

You have the right to know what measures the government is planning to take...

Rural Sanitation	Urban Sanitation
TOTAL SANITATION CAMPAIGN GUIDELINES AS REVISED UP TO 2011	NATIONAL URBAN SANITATION POLICY, 2008
<ul style="list-style-type: none"> [i] demand-driven approach <ul style="list-style-type: none"> o users get the service they want and are willing to pay for o selection of location-specific technologies to match paying capacity [ii] Focus on Information, Education & Communication and Capacity Building & Hygiene Education campaigns to create awareness and behaviour change and to generate demand for sanitation facilities [iii] Increased role for community, panchayat raj institutions, co-operatives, women's groups, Self Help Groups, Community Based Organisations and NGOs [iv] Incentives for constructing and using sanitation facilities/ following good sanitation practices (Nirmal Gram Puraskar) rather than subsidies 	<ul style="list-style-type: none"> [i] comprehensive definition of sanitation [ii] Policy Goals <ul style="list-style-type: none"> o awareness generation and behaviour change o achieving open defecation free cities o integrated city-wide sanitation [iii] State Level Urban Sanitation Strategies, State Reward Schemes and model City Sanitation Plans to operationalize State strategies [iv] Community participation and public-private partnerships (PPPs) [v] Incentives to promote achievement of sanitation goals (Nirmal Shahar Puraskar)
	DRAFT STATE SANITATION POLICY 2010
	<ul style="list-style-type: none"> [i] Access to sanitation facilities to poor communities and other unserved settlements [ii] Promotion of PPPs [iii] Emphasis on awareness creation [iv] Incentives to promote achievement of sanitation goals – National Award

VI

WHAT ARE THE DUTIES & RESPONSIBILITIES OF INSTITUTIONS WITH RESPECT TO WATER REGULATION, MANAGEMENT & PROTECTION?

Different agencies exist at different levels (from local bodies to the state government) to manage and provide water for various purposes.

S. No.	Institution/ Department/ Agency	Level	Duties/Responsibilities
1.	Irrigation Department	State	<ul style="list-style-type: none"> - Irrigation & water management - Flood control & management - Drainage improvement & maintenance - Construction of projects and mechanical work - Dam safety and monitoring
2.	Water Users Association	Village	<ul style="list-style-type: none"> - Regulation of water use in area of operation - Assist in collection of water rates - Monitor flow of water - Prepare operational plan based on entitlement, area, soil and cropping pattern at the beginning of each season - Conduct annual auditing, water budgeting and periodic social auditing - Prepare plan for maintenance of irrigation system in area of operation - Maintenance of inventories of irrigation system in area of operation
3.	Groundwater Department	State	<ul style="list-style-type: none"> - Investigation for development of groundwater resources <ul style="list-style-type: none"> o Artificial recharge of groundwater o Hydro-geological studies o Rain water harvesting o Roof top rain water harvesting o Rain water recharging - Strengthening and development of groundwater <ul style="list-style-type: none"> o Chemical analysis of groundwater samples in rural areas for agriculture purpose & urban areas for drinking purpose o Drilling of tubewells & exploration drilling - Construction of piezometer for measurement of groundwater level in rural & urban areas
4.	Uttar Pradesh Jal Nigam	State	<ul style="list-style-type: none"> - Prepare state plan for water supply, sewerage & drainage on the directions of the state government - Prepare, execute, promote and finance the schemes for water supply and sewage disposal - Review & advise on charges of water supply in the areas of Jal Sansthan & local bodies - Establish state standards for water supply and sewerage services - Review & appraise the pertinent aspects of every water supply & sewerage scheme in the state - Annual review of water supply & sewerage system to Jal Sansthan and other local bodies which have entered into an agreement with Jal Nigam - Provide water supply & sewerage services to the state government & local bodies & on request to private and public institutions

S. No.	Institution/ Department/ Agency	Level	Duties/Responsibilities
5.	Jal Sansthan	City	<ul style="list-style-type: none"> - Operation and Maintenance of Head works for water supply and distribution of drinking water to households and public stand posts - Sanctioning new house service connections - Creating awareness among people to conserve water and construct rainwater harvesting structures - Billing and collection of water charges - Conveyance and distribution of water for private and public uses
6.	Municipal Corporation	City	<ul style="list-style-type: none"> - Manage & maintain corporation waterworks for sufficient supply of water for domestic, industrial & commercial purposes - Construct & maintain drain and drainage works, public latrines, urinals etc. - Watering, scavenging & cleansing of public streets and other places - Prevent use of polluted water for human consumption - Collection, removal, treatment & disposal of sewage, offensive matter & rubbish
7.	Village Water & Sanitation Committee	Village	<ul style="list-style-type: none"> - Manage water supply and sanitation - Implement drinking water supply scheme of own choice with active local participation

A What is the right to information law?

The Right to Information Act, 2005 provides citizens the right to access 'information' that is already held by or is under the control of a 'public authority'. However, the right is not absolute and certain categories of information are exempt from disclosure, unless disclosure is in public interest.

VII

HOW IS THE RIGHT TO INFORMATION LAW USEFUL?

PROCEDURE FOR SEEKING INFORMATION UNDER THE RTI ACT

- 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

B What type of information can be sought in the right to water and sanitation context?

- Information regarding various already implementing or planned water supply and sanitation schemes
- Information regarding the money received and spent for water supply and sanitation
- Information regarding quality and quantity of water supply

Some of the government agencies that can be approached for water related issues/complaints are:

- Uttar Pradesh Jal Nigam/Jal Sansthan
- Irrigation Department
- Groundwater Department
- Local Bodies (Municipalities, Municipal Corporations, Panchayats)

