

# Right to Water and Sanitation<sup>1</sup>

By Indira Khurana and Richard Mahapatra  
WaterAid India

## **Don't get it wrong, it is a right!**

Imagine the plight of close to 19.5 million rural people who don't have access to safe drinking water<sup>i</sup>. And what is more, if you add the number of people (in rural areas) not having access to water, having partial access to water and people whose water sources are contaminated, **77 million Indians face problem with his/her water both in quantity or quality.**

On sanitation, the other fundamental crutch of life, the story is similar. Two out of every three Indians defecates in the open, more due to constraints than behaviour<sup>ii</sup> (See Table 1). The health burden of inadequate sanitation is so high that the country spends more on health than on direct sanitation provision. And 1.5 million children die of diarrhoea every year<sup>iii</sup>.

But why don't we have access to safe drinking water and sanitation? Isn't it fundamental to survival? By term of physical existence as well as according to codes of civilized and dignified living, water and sanitation are fundamental rights. The Indian Constitution, its numerous interpretations by highest judicial institutions and the extensive laws and regulations in force give fundamental rights status to water and sanitation, but there is no explicit provision for this.

## **Lack of access to drinking water and sanitation is perhaps the most passive and pervasive human rights violation in the country.**

Lack of safe drinking water and sanitation triggers a chain reaction, leading to further marginalization. Lack of water means poverty and poverty means lack of capability to access basic necessities of life and live with dignity. This includes sanitation. At the end, the poor divert their meager income to get respite from diseases, leaving them poorer. Though less assertive about their rights, there are examples where the poor have struggled hard for accessing these.

Recognizing water and sanitation as rights more explicitly and with measures for its assertion in an enforceable way is critical to overall human development. And, with rights come responsibilities towards water and sanitation, which need to be accepted as well.

Table 1: Coverage status of drinking water and sanitation

<b>Drinking water coverage</b>	Percent population covered
Rural *	66.4 %
Urban **	91 %
<b>Sanitation coverage</b>	
Rural ***	56 %
Urban ****	83.2 %

Sources:

\*<http://www.ddws.nic.in/OnlineMonitoring/indexframeset.htm>

\*\*Report of the Working group on Urban Development, 2006, MoUD, Gol

<sup>1</sup> *This briefing paper is based on secondary research. It reviews the current status of drinking water and sanitation and issues related to rights over them.*

### **Catch 21 situation**

The Constitution of India guarantees wholesome life. Article 21 ensures right to life for Indian citizens. Over a period of time, the Supreme Court of India and various state high courts have defined the right to life as enshrined in the Constitution. In a sub-judice case in the Supreme Court, the court has given notice to union ministry of health on quality of water sources in villages. In this case the litigant has asked the court to enforce quality water in sources for drinking water and the argument is that non-safe water is a violation of right to live. Besides, India has been a signatory to many international conventions that treat water and sanitation as a right (*See box: International commitments*).

Summing up key judicial pronouncements it emerges that the right to life in the Constitution means rights to water and sanitation as well. Courts have not only termed right to water as a fundamental right but also have defined water as a 'social asset'. Some of the key pronouncements are given below:

- In 1981, the Supreme Court in a case ruled<sup>iv</sup>: “The right to life includes the right to live with human dignity and all that goes with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and mingling with fellow human beings. The magnitude and components of this right would depend upon the extent of economic development of the country, but it must, in any view of the matter, include the bare necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of human self.”
- In 2002, the apex court validated the Sardar Sarovar dam project on Narmada in 2000 interpreting the right to life article as right to water. “Water is the basic need for the survival of human beings and is part of the right to life and human right as enshrined in Article 21 of the Constitution of India and can be served only by providing source of water where there is none<sup>v</sup>.”
- In 1990, the Kerala High Court ruling on a groundwater extraction case involving water supply plan for the island of Lakshadweep ruled that government should not extract groundwater impacting the sources in future that in turn violated the Article 21. It ruled: “... the administrative agency cannot be permitted to function in such a manner as to make inroads into the fundamental right under Article 21. The right to life is much more than a right to animal existence and its attributes are manifold, as life itself. A prioritizing of human needs and a new value system has been recognized 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<sup>vi</sup>.”
- In 2004 giving verdict on a PIL on fast depletion of groundwater in Delhi, the apex court ruled that groundwater is a social asset. It further said that people have the right to use air, water and earth interpreting the Article 21<sup>vii</sup>. It even observed that in groundwater use, domestic and irrigation needs must be prioritized.

- Apart from expanding the content of the right to life as including the right to water, the court has, in the context of water pollution, mandated the cleaning up of water sources including rivers (M.C. Mehta v. Union of India), the coastline (S. Jagannath v. Union of India) and even tanks and wells (Hinch Lal Tiwari v. Kamala Devi). The concern over pollution of groundwater by unregulated discharge of effluents has led the court to issue mandatory directions for clean up by the polluter and restitution of the soil and groundwater.
- The court has also applied the 'precautionary principle' to prevent the potential pollution of drinking water sources consequent upon the setting up industries in their vicinity (A.P.Pollution Control Board v. Prof. M.V.Nayudu). Various judicial pronouncements have recognized that water is a community source which is to be held by the state in public trust in recognition of its duty to respect the principle of inter-generational equity.
- On sanitation issues also courts have given verdicts interpreting it as a right under Article 21. In 1988 the Rajasthan High Court ordered the Jaipur municipality to ensure proper sanitation within six months. In 1980 the Supreme Court in a case involving Municipal Council of Ratlam, Madhya Pradesh and a citizen, ruled: "Decency and dignity are non-negotiable facets of human rights and are a first change on the local-self governing bodies."

Ruchi Pant, a policy analyst, has argued in her assessment of right to water in India that other articles of fundamental rights also support protecting the right to water as interpreted using the Article 21. "Article 14 has been interpreted by the judiciary as guaranteeing inter-generational equity i.e. the right of each generation of human beings to benefit from natural and cultural inheritance from past generations. This therefore requires conserving the biological diversity and the sustainable use of other renewable and non-renewable natural resources including water) for future generations." Besides, Article 15 (2) of the Constitution makes equitable access to water sources a right. It says that nobody should be debarred from use of wells, tanks and bathing provisions. The non-enforceable directive principles of state policy ask states to ensure equal access to community resources like water and forests.

However, as experiences have shown that without the right being explicitly mentioned in the Constitution, the state doesn't have enforceable liability for access to safe drinking water and sanitation. If water is made a fundamental right, it will increase the state obligation to fulfill this right and will also empower the common people to demand this basic need from the state. A human right dimension to water could impose three main obligations on the state:

1. To respect: For this, states will have to refrain from engaging in any practice or activity that denies or limits equal access to adequate water; arbitrarily interfering with traditional arrangements for water allocation and unlawfully polluting water and limiting access to, or destroying, water services and infrastructures.
2. To protect: For this, it will adopt the necessary and effective legislative and other measures to restrain third parties from denying access to adequate water and from polluting and inequitably extracting from water resources; prevent third parties from compromising equal, affordable and physical access to sufficient and safe water where water services are operated or controlled by third parties.
3. To fulfill: If water were to be recognized as a human right, states could meet his obligation by way of legislative implementation, adaptation of a national water strategy

and plan of action to realize this right while ensuring that water is affordable and available for everyone.

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**Box: International commitments**

*Key international agreements/conventions treat water and sanitation as a human right*

- **Mar Del Plata Declaration** (1977) states that all people have right to drinking water in quality and quantity, irrespective of the level of economic development of the native country and stage of development.
- **Convention on Elimination of all Forms of Discrimination against Women** [1979, Article 14 2(h)] explicitly mentions about provision of water and sanitation to women.
- **Convention on Rights of Child** [1989, Article 24 2(c)] mentions right to safe drinking water of a child from a non-polluted source.
- **Agenda 21, UN Conference on Environment and Development** (1992) calls for provision of safe drinking water and environmental sanitation for poverty alleviation.
- **Programme of Action of the International Conference on Population and Development** (Cairo 1994) mentions right to water and sanitation in realizing complete human potential and sustainable development.
- **United Nations General Comment 15** (2002), the right to water (articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights) states the Human Right to Water “entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses”.

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**Left without rights**

While there is increased focus and funding for water and sanitation, there is less understanding of the complex sector, which has resulted in a violation of rights to water and sanitation.

- **Drinking water coverage in rural India has shrunk to 66.4 % according to latest government data<sup>viii</sup>**. This is an unprecedented slip back in drinking water coverage as in 2005 it was 95%. Around 19.5 million rural people don't have access to safe drinking water. In urban areas around 11% of households do not have access to any water for some parts of a year.
- **Going by the government data of habitations not covered with drinking water, partially covered and having quality problems in water sources, 77 million people don't have access to water both in quality or quantity.**

- The World Water Development Report, 2003 indicates that in terms of availability of water, India is at the 133rd position among 180 countries and as regards the quality of the water available, it is 120th among 122 countries.
- While sanitation coverage is improving, the target of total sanitation by 2012 is daunting: Still 665 million people continue to practice open defecation<sup>x</sup>. One in every six urban household defecates in the open because they don't have access to any latrine<sup>x</sup>. In sanitation sector also slip back and non-usage of toilet have the potential to derail progress.

## Human Cost

The right violation has a tragic human cost: annually over 37.7 million Indians, over 75% of whom are children under the age of five, die due to various water borne diseases. Nearly 1.5 million children are estimated to die of Diarrhea alone.

“Realising the right to water, like all economic, social, and cultural rights, requires greater specificity in the context of the rights themselves, along with profound changes in the structures and budget priorities of governments as well as broader mobilization to claim them,” observed Priya Sangameswaran, a policy analyst with Bengaluru-based Centre for Interdisciplinary Studies in Environment and Development. India’s Scheduled Tribes and Castes (ST/SCs) population, the largest chunk of the country’s poor, are an example of social exclusion resulting out of poverty and marginalization. In case of drinking water, the Accelerated Rural Water Supply Programme has mandated that each state spends a minimum of 25% for SCs and another 10% for STs. Analysis of official data shows that at an average more than 40% of the earmarked expenditure for SCs have not been made despite the fact that this section of population is the least covered with drinking water provisions.

Though Article 17 abolished untouchability, the community of manual scavengers continues to face social ostracization. It is illegal under Indian laws to do manual scavenging or to engage any person in such practice. But there are some 3.42 lakh manual scavengers in India. Off late many feel that if sanitation would have been a right, manual scavenging would have been done away with long back.

## Understanding water and sanitation rights

The World Water Day is a reminder: How many more would die of avoidable diseases before we get water and sanitation as right? **During the South Asian Conference on Sanitation – III (SACOSAN-III), held in November 2008 in Delhi, Prime Minister Manmohan Singh declared water and sanitation as a human right.** It came as a solace for in the two years between this and earlier SACOSAN, one million children died of water born diseases in South Asia.

**From April 1, 2009 the Department of Drinking Water Supply, Ministry of Rural Development, will adopt new guidelines for its rural drinking water supply programmes which treat water as a right.** This is another reason to be hopeful.

There is a need to understand how the existing laws and regulations can enforce the right to water and sanitation. Right to water has many dimensions. Issues of entitlement, priority of uses within the right, conflict avoidance, the institutional mechanism at the appropriate level to

enforce the right, accountability and transparency, accessibility and affordability and the responsibility of source sustainability are some of these.

### **Rights also mean responsibilities**

Article 21 guarantees right to water but there are few options available to ensure the right. As civil society organizations, we have dual responsibilities: to raise the awareness on the centrality of water right within the fundamental right to life and to dwell with ways and means that ensure the right.

With rights come responsibilities. Drinking water is too basic and fundamental a need to be left to governments only. The Constitution of India has made provisions for fundamental duties from citizens as well as the state. Article 51-A classifies duties towards self, duties towards the environment and towards the nation. Article 51 A (g) states that 'it shall be the fundamental duty of every citizen to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.' So what we need to adopt and promote is a right combination of rights and responsibilities adherence.

As courts have interpreted water as a social asset, it is the duty of communities to protect and adopt judicious uses of water. At the community level, how do we honour our responsibilities to water and sanitation sector? Being a social and common resource, it needs responsible responses from various communities. There are examples that show that village communities have adopted water budgeting for efficient uses. They are an example of community responsibility towards enforcing water rights. On the other hand government programmes and policies must make right to water as the core of its service provisions.

Here is where, with respect to drinking water and sanitation, civil societies can play an important role. This includes (a) Informing, encouraging and empowering communities about their rights so that these can be accessed (b) Empowering them to protect water sources so that these are sustained in quality and quantity (c) Convincing them so that they change their behavior towards a cleaner environment and judicious use of water (d) Engaging with the governments for sharing experiences (e) Adopt self regulatory mechanisms to control water quality and use.

<sup>i</sup> Based on the drinking water coverage status of habitations as shown in Department of Drinking Water Supply, Union Ministry of Rural Development ([www.ddws.nic.in/OnlineMonitoring/indexframeset.htm](http://www.ddws.nic.in/OnlineMonitoring/indexframeset.htm)) website as on March 20 2009. According to DDWS norms, one habitation has 20 households and each household having five members. The figure of 20 million people not covered for drinking water is based on the population of the 1.95 lakh (approximately) non-covered habitations using the above norms.

<sup>ii</sup> Based on estimate of WHO, 2008 that shows that 665 million people defecate in open.

<sup>iii</sup> Implementation Manual on National Rural Water Quality Monitoring and Surveillance Programme, DDWS, MoRD, 2004, Delhi.

<sup>iv</sup> Francis Coralie Mullin V. The Administrator, Union Territory of Delhi 1981 (2) SCR 516

<sup>v</sup> Narmada Bachao Andolon v. Union of India (2000) 10 SCC 664 at 767

<sup>vi</sup> From Communities' Hand to MNCs' BOOTS: A Case Study from India on Right to Water, Ruchi Pant, Ecoserve, Uttaranchal, 2003.

<sup>vii</sup> MC Mehta V. Union of India 2004(12) SCC 118

<sup>viii</sup> [www.ddws.nic.in/OnlineMonitoring/indexframeset.htm](http://www.ddws.nic.in/OnlineMonitoring/indexframeset.htm)

<sup>ix</sup> Joint Monitoring Programme for Water Supply and Sanitation (JMP), WHO-UNICEF, 2008

<sup>x</sup> Draft Urban Water and Sanitation Policy for the Poor, 2008, Ministry of Housing and Urban Poverty Alleviation, Government of India, Delhi.