

# **Right to Water and Sanitation**

## Moving Towards a Constitutional Guarantee

### **Visioning and Strategy Planning Meeting Report**

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#### **Convenors**

The Forum for Policy Dialogue on Water Conflicts in India (FORUM)

Freshwater Action Network – South Asia (FANSA)

WaterAid India

India WASH Forum



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# Foreword

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Expanding the scope of Rights from the traditional civil and political rights to economic rights – was contested internationally during the Cold war period, following the UN Declaration of Human Rights.

Community participation, gender, empowerment, rights and inclusion - this has been the trajectory of development work by NGOs. Rights discourse has now come to dominate the goals, strategy and programmes of various international NGOs and is even finding its way in the government programmes and some of the recent legislations.

Given the rampant poverty and inequality in India that is manifested in huge numbers and large areas that remain far removed from the influence of a vocal media or civil rights movements, the poorest and socially marginalised people suffer from a lack of basic requirements of food, water, medical care, education. On account of their economic and social conditions, they do not get treated as citizens but as subjects of an uncaring and oppressive state machinery (including other private and quasi state service providers). Rights discourse has meaning in this context.

Only when faced with extreme injustice, do the people of our country invoke their rights as citizens. A few civil society organisations work towards establishing the rule of law and controlling the powers of the state to infringe on the civil and political rights of the people (eg. movements against the Armed Forces Special Protection Act and various other Acts against terrorism that take away civil and political rights).

Understanding what constitutes the state and what constitutes the government is often blurred due to the way the two are understood by civil society. The state can divide people by posing the rights of one section of people against the rights of other sections or geographical regions (eg. Narmada and Cauvery disputes). Many NGOs and project focussed service delivery work of some of the most well meaning people, wrongly juxtapose Rights of citizens with duties (that are responsibilities of the state). Funded programmes make commitment to Rights but are weary of expanding the Rights discourse to scale through a project mode. While on the one hand discourse on Rights is becoming more visible, on the other hand donors are demanding more and more results and outcomes in short duration funded projects, that sometimes undermine the reality of long and sustained struggles that are needed to work meaningfully on Rights. Rights work then gets narrowly focussed on Policy Advocacy lobbying at the highest level and gets cut off from the struggles and the leadership on the ground. Some donors are focussing more on exclusion and sometimes this tends to confuse the Rights based work. The state can also under the garb of accountability to citizens, disown the humanitarian commitment to large number of cross border migrants, specially during the time of natural disasters and emergencies.

Right to Water and Sanitation falls under the economic and social Rights discourse. Broadly coming under a liberal interpretation of Article 21, Right to Life, the first such struggle was the 1981 Bombay Street Dwellers struggle against evictions, through the now famous Public Interest Litigation route. The crisis of safe and affordable drinking water, water requirement for livelihoods and animal husbandry and infrastructure for rural and urban sanitation – is becoming acute by the day. All individual efforts to improve the situation are valuable. There is also a need to have some joined up work. In this situation, representatives of various civil society organisations, gathered for this workshop, as Rights Advocates, to understand and learn from the experience of other coalitions and alliances on Education, Health and Work, to build an alliance that can spearhead a movement for a constitutionally recognised Right to Water and Sanitation.

The process leading to this workshop included drafting a concept note jointly by four organisations on what we intend to do. Developing an agenda and for the workshop and taking the responsibility for taking this work forward jointly. We thank all the participants and the key speakers Dr. Vinod Raina, Dr. Abhijit Das and Ms. Dipa Sinha. We are also grateful to Mr. Shantanu Consul, Secretary, Department of Drinking Water Supply and his entire team for participating and supporting this workshop.

Depinder Kapur  
National Coordinator  
India WASH Forum

# Statement of Intent

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We the undersigned have come together to pitch in our efforts for developing a shared understanding and learning from recent efforts made by other coalitions and alliances towards securing justiciable Rights for Education, Health, Food and Work. This shared statement of our intent is aimed at developing our understanding and commitment towards jointly working for and securing Water and Sanitation – as a justiciable Right through an Act. This statement we believe will serve as our benchmark for guiding action when we build a national alliance/campaign on Right to Water and Sanitation.

We had come together on the 5th Aug 2009 for a workshop on “Right to Water and Sanitation: Moving Towards a Constitutional Guarantee”. The workshop was helpful in developing our perspective, it presented us with the following directions to work:

1. Working towards securing justiciable Right involves three principle actors:
  - a. Rights Claimants : the affected people
  - b. Rights Advocates : those who may include the affected but also those who play the advocacy role on behalf of the Rights Claimants
  - c. Duty Bearers: the bureaucracy or Utilities and Authorities

For each one of us who is partnering in this initiative, we must be clear in which category we see ourselves. This has an important bearing on the roles we should be playing. We as NGOs see our role as Rights Advocates and we need to make a special effort to bring Rights Claimants to the forefront of the leadership of a Right to Water and Sanitation Alliance.

2. Role of private sector. What was once a sole responsibility of the government to provide for its citizens, water and sanitation services are being provided by a large number of private agencies. The Alliance for Right to Water and Sanitation will have to take this into account.
3. We believe the campaign/alliance will need to define its theoretical/political anchor and scope of engagement with Right to Water and Sanitation. Would the RTWS

campaign/alliance position itself within the realm of the immediate practical priorities or will it also be willing to question the larger power relations and structural barriers? This will determine who will be our allies and partners in the alliance. Some critical areas to develop clarity are on:

- a. Build a larger social-political constituency for itself beyond the NGO discourse?
  - b. Basic Rights to Water and Sanitation vs. “Third generation rights” as was the case in Health.
  - c. Structural issues that exacerbate poverty and exclusion including neo liberal market policies. Will we look at these in developing our Rights Claims?
4. We will track how water is positioned by international bodies, national and international NGOs and other influential institutions. To understand and counter them if these go against the principles of Right to Water and Sanitation.
  5. We are conscious that the alliance/campaign may succeed in getting a Right into a justiciable Act/Law but if this is not backed by adequate resources in the Act (funding commitments for new entitlements, putting in place clear institutional systems, staff and mechanisms for its enforcement) for the Act to become operational at the level of state governments and centre government – the justiciable Act/Law remains on paper.
  6. We realise that working towards establishing claims of right to water and sanitation as justiciable Act will be difficult, given the particular character of water use and for sanitation. We have to be careful for the following:
    - a. Water and Sanitation are subjects in the “State List”. Many critical issues are left to the Water Policy of the states. The RTWS alliance/campaign may have to work towards including all relevant issues that are not considered justiciable right now. This challenge of expanding the Rights mandate in the water Policy is very big. Also, if the Law is enacted then the campaign may need to work in States to endure that states adopt the Act.

- b. Address loopholes in the existing Acts.
  - c. Ensure Customary Community Rights on water are not taken away by a legislation/Act.
  - d. Creation of quasi judicial bodies as state regulatory authorities is changing the political and administrative terrain. These impact on the Rights based alliance/campaign strategy.
  - e. Practical efforts that provide solutions in short term, are important while we build a for the longer term Right to Water and Sanitation.
  - f. Providing Costing scenarios/implications of Right to Water and Sanitation, with which we can go to the government and policy makers.
  - g. Developing Norms where none exist: specially for urban sanitation, revising existing norms
  - h. Understanding the counters and what we mean by right to sanitation, from a community perspective.
  - i. Addressing contradictions with other approaches that currently dominate the Drinking water and sanitation discourse. Eg. CLTS approach is focussed on behaviour change and not on resources and government as Duty Bearer, demand Driven Approach that puts all responsibility on citizens, etc.
7. We believe there are certain clear enabling contexts for Right to Water and Sanitation:
- a. Almost every Policy document of India on water or rural and urban development, refers to drinking water priority use above all other uses of water and for providing safe living conditions and livelihoods. However, these are non-binding statements that are not enforceable and are non-justiciable.
  - b. Right to Life as A Fundamental Right in the Indian Constitution
  - c. Several court judgements have expressed concern for violations of right to water and of poor people's access to water and sanitation under Article 21.
  - d. Water User Associations, Village Water and Sanitation Committees and other Rights Claimants organisations exist.
  - e. Norms for drinking water are developed
  - f. Several grassroots movements have worked on right to water for a long time including securing entitlements for the land less (over water), can be potential alliance partners.
  - g. Other grassroot movements working on other rights such as gender, health, education can also be potential alliance partners.
8. We believe that campaign/alliance building will include the following challenges:
- a. Developing a common understanding amongst us as the signatories of this statement, on defining what we want to achieve as a coalition/alliance/campaign. Developing alliance decision making processes that are transparent and effective in decision making. This statement of Intent is the first step in this direction.
  - b. Expanding the alliance with more Right Holders in leadership position of the campaign along with Rights Advocates. Lessons from Education, NREGA, others.
  - c. Securing Resources. Developing an alliance structure including some dedicated staff to support the alliance functioning, securing time of experts and volunteers for providing intellectual inputs in developing coalition campaign demands and analysis of alternative budgetary allocations.
  - d. Developing Synergy with other Alliances, organised bodies of Trade Unions, Farmer Associations, Slum Dwellers, Academic institutions, Media, political constituencies, etc.
  - e. Set up two working groups:
    - i. One working from the drinking water and sanitation perspective of Rights
    - ii. Another working from the larger perspective of "water security" as a basic Right for livelihoods, including drinking water and sanitation.

India WASH Forum, WaterAid India, FORUM, FANSA  
Sept 2009

# List of Acronyms

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AIDS	– Acquired Immunodeficiency Syndrome
APWLTA	– Andhra Pradesh Water, Land and Trees Act
BPL	– Below Poverty Line
CEDAW	– Convention on the Elimination of all forms of Discrimination against Women
CMP	– Common Minimum Programme
CRC	– Convention on the Rights of the Child
DFID	– The Department for International Development [British Government]
DDWS	– Department of Drinking Water Supply
DISE	– District Information System for Education
FORUM	– The Forum for Policy Dialogue on Water Conflicts in India
FANSA	– Freshwater Action Network – South Asia
HIV	– Human Immunodeficiency Virus
ICERD	– International Convention on the Elimination of all forms of Racial Discrimination
ICESCR	– The International Covenant on Economic, Social and Cultural Rights
IWF	– India WASH Forum
JSA	– Jan Swasthya Abhiyan
LPCD	– Litres per capita Per day
MARI	– Modern Architect of Rural India
NAC	– National Advisory Council
NAFTA	– North American Free Trade Agreement
NCPCR	– National Commission for Protection of Child Rights
NGOs	– Non-Government Organisations
NHRC	– National Human Rights Commission
NREGA	– National Rural Employment Guarantee Act
NRHM	– National Rural Health Mission
PRIs	– Panchayati Raj Institutions
PIL	– Public Interest Litigation
RTWS	– Right to Water and Sanitation
SACOSAN	– South Asian Conference on Sanitation
SC	– Supreme Court
SGYA	– Sampurna Grameen Rozgar Yojna
UPA	– United Progressive Alliance
UN	– United Nations
USAID	– United States Agency for International Development
USSR	– Union of Soviet Socialist Republics
WAI	– WaterAid India





# Session 1: Inaugural Session

## Learnings from Other Rights Campaigns in India

**Keynote Address:** Mr. Shantanu Consul, Secretary DDWS, Government of India

**Session Chair:** Mr. Depinder Kapur, National Coordinator, India WASH Forum

Mr. Shantanu Consul, Secretary Department of Drinking Water Supply, Ministry of Rural Development, Department of Drinking Water Supply gave the Keynote Address for the Workshop. Abhijit Das, Centre for Health and Social Justice, Vinod Raina, Bharat Gyan Vigyan Samiti and Dipa Sinha right to work campaign were the main Speakers.

Welcoming the participants, Mr. Kapur noted that the aim of the first half of the meeting was to learn from the experiences of rights-based struggles in other sectors, as shared by leaders in the struggles to secure the Right to Primary Education, to Health and to Employment Guarantee. Further on the workshop would examine Rights in context and fit with regard to the water and sanitation sector, as well as the feasibility of establishing the constitutional and legal validity of the Right to Water and Sanitation. Finally, it would decide what collective action could be taken at different levels and arrive at a plan of action as a coalition of partner organisations.

### **Keynote Address: Mr. Shantanu Consul, Secretary DDWS, Government of India**

Observing that only the previous day, Parliament had passed the Right to Education Bill, thus making it an Act, Mr. Consul noted that the journey from the Supreme Court pronouncement that had paved the way for the establishment of this right, to the passing of the Bill, had taken 16 years. He felt that the path to establish the claims of water and sanitation as a fundamental Right was likely to be more difficult, but was nevertheless hopeful that it would not take as long. Mr. Consul recalled the vicious cycle which denied marginalised people adequate access to water and sanitation, compromising their dignity and contributing to further marginalisation. He noted that the lack of water and sanitation compromised health, made disease more likely and pushed the already vulnerable further into poverty. This, in turn, increased the likelihood of perpetuating their lack of access to water and sanitation. The most visible impact of these cycles was in the death of children from waterborne diseases.



Mr. Consul asserted that access to clean drinking water and sanitation was essential to for health and dignity for all, however, securing a right implied making a regulation, as well as everything necessary to make the right enforceable: namely, the institutional mechanisms, governance systems and practices, human values and trust necessary to realise the right. At the same time, rights implied duties, which involved responsibilities too important to be left only to government. The Constitution of India lays down duties to self, the nation, and to the environment. Activities which led to lowering the water table to critical levels and the continuing pollution of water bodies made the task of providing water difficult, and he called for stiff and deterrent action to prevent this.

He shared that more than one multilateral body had stressed that the right to water and sanitation must be acknowledged and acted upon by governments. Further, tools such as the Manual on the Right to Water and Sanitation published by UN-HABITAT existed to assist governments with this task. Often, however, other considerations prevented governments from going ahead with granting this right. For instance, Canada's steadfast opposition to recognising the right to water and sanitation was not because of any basic opposition to human beings securing water or sanitation, but because of a concern whether supporting this right would endanger their own

water potential and sources some time in the future. Enumerating some of the difficulties which would make granting the right difficult for the government of India, Mr. Consul reminded the participants that unlike education, which was a subject on the Concurrent List, water and sanitation were both state subjects. Further, both these were areas of responsibility which could be devolved on the local governments by the state according to the 11th and 12th Schedules of the Constitution. Decentralisation was essential, and it was easy enough to pass on the responsibility of providing clean drinking water and sanitation to the panchayati raj institutions (PRIs) with the stroke of a pen. However, while several panchayats had shown themselves equal to the task of good local governance, a much larger number needed support to build technical capacity and human resources to access, manage and utilise funds meant for this purpose.

A third issue related to the Principle of Progressive Realisation. In terms of greater effectiveness, was it appropriate to focus on water and sanitation, or to focus on health and hygiene, and come to water and sanitation by and by, Mr Consul asked.

He also noted that all too often, sanitation did not receive adequate attention as part of the initiatives related to water or health. Questions were always raised about whether providing universal sanitation was technically or financially feasible. However, some reliable calculations had put the damages at billions of rupees more than the costs of investing in the technical capacity, infrastructure and changes in attitude involved in providing access.

Summing up, Mr. Consul reiterated the concepts of Sufficiency, Cleanliness, Accessibility and Affordability associated with providing universal service. He noted that countries like South Africa, Uruguay and Morocco had recognised the right to water and sanitation. Others like Hungary were involved in drafting and adopting the necessary regulations. He stated that the need for the right to drinking water and sanitation was a given for India. However, as Secretary of the Department of Drinking Water Supply, he would need help and consultation on several issues.

- **Timing:** When should the right be granted? Right away, or would it be more viable to follow the principle of progressive realisation? Did it make sense to build awareness, undertake social mobilisation, create a demand, and then confer the right?

- **Mode:** How was the right to be granted? By amending the law? Or by using existing legal safeguards and improving administrative procedures?
- **Related Reforms:** Building awareness might well lead to the declaration of the right to water and sanitation along with the necessary amendments to uphold the constitutional validity of the right. However, in order to make the right real on the ground, it was necessary to determine what actions were necessary in what sectors and in what sequence and to fix responsibilities, and a timeline.

Emphasising the importance of putting these in place, Mr. Consul provided a relevant example from the water sector. PRIs could be asked to provide clean drinking water. However, they had no control over the forests and catchment areas, or over reservoirs. Without adequate powers to address issues related to sources, PRIs were asked to provide good quality water. It was necessary to find meaningful solutions to these gridlocks. Otherwise, there was a very real possibility of PRIs passing the responsibility back to the states, and the states in turn to the Centre.

Institutions and Procedures for Implementation: A number of pragmatic and logistical issues would also need to be worked out.

### Parameters

These would have to be drawn up to determine whether the standards were both fair and practical. This would be a challenge. For example: how much water would be associated with fulfilling the right to water; would these parameters apply equally to urban and rural areas; why should the standard be 200 litres lcpd in the cities, and 40 litres lcpd in rural areas? Cities often had filtration and chlorination plants. Would rural areas have to continue to use untreated water supplied by a pipe from a surface water source?

Mechanisms and procedures to make the right enforceable: If the municipality did not provide water supply that was of adequate quantity and quality, how could citizens hold their local governments accountable? How would they be prosecuted? What punishment measures could be imposed and enforced?

Mr. Consul ended his keynote address with the words, "I am convinced of the Right to Water and Sanitation. How can we do it meaningfully and successfully is the question".

# Drawing from the Experience of Right to Education

**Dr. Vinod Raina**

Expressing admiration that Mr. Shantanu Consul, Secretary, Government of India, had chosen to be present at this preliminary meeting to decide on the feasibility of the right to water and sanitation as a constitutionally enforceable right, Dr. Vinod Raina said it was very heartening, and very much in contrast to the response of government officials during the campaign on the right to education.

In seeking to secure a right, the effort was to establish state obligation and state responsibility; to move away from the welfare mode, on which most state schemes designed, to the entitlement mode. The first issue was whether to secure a separate legal framework for the right. According to Article 45 of the Directive Principles of State Policy, all children below the age of 14 were to be provided with free and compulsory education within ten years from the commencement of the Constitution. (This was the only Directive Principle in the Constitution to specify a time frame). However, after 62 years, half the children in India, or about 10 crore children, were still to complete eight years of schooling. Had it not been for the judgement of the Supreme Court in 1993 in the case of Unnikrishnan v. State of Andhra Pradesh that taking Article 21 and Directive Principle 45 together, the right to education exists, and the state can claim resource constraints for not implementing this Directive Principle only for children above the age of 14, the state would still not have been nudged into action. The question then was whether to secure a separate legal framework for the right to education – whether it was valuable to keep a holistic Right to Life, or to fragment and “departmentalise” it by getting a separate right to education. The decision to go ahead with the campaign for a separate right to education was based on the observation that the right to life itself is not taken very seriously by the state.

The issue of whether to keep the right to life holistic is more true for water, as the right to life gives citizens the right to water. It would be interesting to consider what would be the outcome of a public interest litigation (PIL) on whether the right to life includes the right to water. He noted that the state had responded to the Unnikrishnan judgement by saying that it would make a law for the purpose – provide education to children between the ages of six and 14 “in such manner as the state, by law, may determine.” There were two negative consequences of this action by the state. First, whereas the Supreme Court judgement enjoined the provision of education below the age of 14, the state’s pronouncement “knocked out”



the early childhood education component, education for children up to six years of age. Second, by saying that it would make the law, it set aside the judgement, or, effectively, kept Article 21 in abeyance with respect to the right to education from 1993 till 2002 when the 86th Constitutional Amendment was passed. It was important therefore to be alert to such strategies of the state, which may reduce or delay entitlements given by the court.

## Challenges Ahead

### Assigning responsibility

The need for and success in achieving universal literacy through “free and compulsory” education has been established and recognised all over the world, said Dr Raina, predicting that a critical aspect in the fight towards the right to education – negotiations between the triad of the state, the market and the community – would prove an even greater challenge in the battle to secure the right to water and sanitation. He referred to countries where the state had not been instrumental in providing universal free education (unlike Britain, which had done so in 1870, inspiring many nations to follow suit), noting that in such cases it was imperative but difficult to ensure that each member of the triad took up their share of the responsibility.

### Enforcing the Act

The next critical challenge, he noted, drawing from his experience with the Right to Education Bill was enforcement. Initially, the state in the first draft Bill had interpreted “compulsory” as applicable to parents, he said. Parents were thus responsible for ensuring their wards attended at

school, or were liable for punishment. However, campaigners pointed out that bringing in this provision might well imply a punishment for poverty in a country where the vast majority of the parents were uneducated and poor; more parents would end up in jail than children in schools. These advocates were effectively able to shift the traditional parental obligation to the state, and the Act today states holds the State responsible, if a child between the ages of six and 14 is not in school.

### **Application: Who should provide the services required?**

He then tackled a third tricky aspect: should the State or private parties provide services associated with realising the right? And how should the community be involved? The first confrontation with regard to the Right to Education, was whether service provision would be through the state apparatus, with the perception that this would be cumbersome, bureaucratic and outdated; or whether service provision should be promoted through private parties, with the perception that these were “more efficient”, with the state providing vouchers (which could be encashed by parents as fees if the parents chose private schools instead of government schools). While the 11th Plan was in favour of a voucher system, the campaign held firmly to the concept of a “common neighbourhood school”, i.e., children should have the right to attend any school within one to three kilometres of their homes, and education must be free. This would imply that there could be no fee-charging schools till the eighth standard, which would be an important political issue with an inevitable confrontation with the market. Another challenge was that the Right to Education Bill should only cover government schools, that the private schools had no obligation at all. What was ultimately negotiated was that private schools could not charge capitation fees in any form, could not undertake screening through interviews of parents, and had to provide free education to 25 per cent of the children from the neighbourhood coming from deprived sections. The government would reimburse the costs of educating this 25 per cent, but according to its own estimates, not according to the fees being charged. The implications of how this would be implemented will have to be seen.

In the case of the Right to Water, the issue of access to water sources and service provision through State, private parties or some combination of the two was likely to be a much bigger battle, with many more stakeholders, and several viewpoints to be negotiated, and , issues affecting the triad of state, market and community in much more complex ways, he said.

### **Some Potentially Contentious Issues**

How establishing the Right to Water as a law would affect customary community rights to water. This law would imply that one could collect water, especially for personal and domestic use, wherever it was available and possible. How will communities negotiate these rights once they are granted, in case the ownership of the resource is private? What implications would negotiated international instruments have for realizing and enforcing the Right to Water?

Using an example to elaborate this issue, Dr. Raina pointed out that the private company Sun Belt Incorporated was selling water from British Columbia in Canada to Saudi Arabia, until the citizens of British Columbia went to court and insisted that their water was not to be used for trading. Sun Belt Inc. was using a clause from the North American Free Trade Agreement (NAFTA), which holds that “water in its natural state is a tradeable commodity.” While no such clauses are part of any international instrument to which India is currently a signatory, environmental lawyers believe that the NAFTA clause will increasingly be used by the World Trade Organisation (WTO). We need to be vigilant for any such eventuality.

### **How much water and for what purposes**

In the case of the Right to Education, determining usage as a matter of right fell within the pre-existing ambit of the Directive Principles: education till the age of 14 was to be free. In the case of water, matters would be much more complicated, Dr. Raina said. There was a risk of being urban-minded, suggesting that only water for personal and domestic use need be considered as a right. However, for rural areas, provision of water for domestic animals and for irrigation is as much of a priority as for personal and domestic use; this would especially impact subsistence livelihood, thus the Right to Livelihood, and therefore, to life. Only focusing on drinking water may not help.

### **Costing Issues**

Free education is largely defined in terms of “no fees.” However, fees are often only a part of the costs involved in educating a child. As a result of pressure and negotiations by the campaigners, the current law holds that the state shall provide for any financial expenditure (and fees) that prevents a child from going to school. Potentially, the present definition can be stretched to cover, say, transportation costs. In the case of water, establishing entitlement levels and purposes will be difficult, and thereafter, decisions will have to be made about what will be for free. How much will be provided at cost? How will the costing be done?

## Monitoring Issues

Securing/winning a justiciable Right is one aspect, monitoring the delivery of the right is quite another. Monitoring in any dispersed system is difficult, and this is one of the weakest links in the Right to Education Bill. For instance, according to the terms of the new Law, children of migrant labour from Chattisgarh seeking admission in a school in Punjab cannot be denied

## Right to Health

### Dr. Abhijit Das

Dr. Das began by expressing happiness at the active participation of DDWS government of India at a meeting to discuss rights, secretary and his team join. Unfortunately, he noted, the Right to Health campaign had found it difficult to get government participation. As a case in point, he said that even though the National Human Rights Commission (NHRC) had recognised maternal health as a right, on a recent occasion when the Campaign on the Right to Health had organised a lecture on the issue by the UN Special Rapporteur on the Right to Health, they had not been able to persuade a single government official to attend it. In contrast at this meeting, with the presence of the Secretary to the Government of India, Mr. Shantanu Consul, and several of his senior colleagues from the Department of Drinking Water Supply, was very heartening.

Taking up from the conclusion of Dr. Raina's presentation, Dr. Das also pointed out that rights work is a contest between entitlements for the poorest of the poor versus prevailing norms for providing basic services needed for life and dignity. It involves challenging a series of judgements which imply that there is somebody who does not want the poorest of the poor to get these basic rights. In embarking upon rights work, these contests have to be understood. Further, very often the people denying rights and those seeking rights are usually in an unfavourable power relationship, with the former higher in the hierarchy and the latter often in a position in which they are de facto beholden to those denying the rights. In this contest between unequals, the State has to take sides. Although the State plays the role of the arbiter, the debate lies between who are the "natural" or historic owners (as decided mostly by the prevailing power situation) and who are the violators.

Another aspect of the contest is when it is between rights and freedoms. A case in point relates to the controversy regarding the repealing of Section 377 of the Indian Penal

admission on account of not having a transfer certificate. However it is going to be difficult to actually ensure that the head teacher of a school in a small town does not deny a child admission on this account. Similar issues related to enforcing the right will apply in the case of the Right to Water and Sanitation as well, he said. Dr. Raina ended his presentation by cautioning the group working on the Right to Water and Sanitation to expect confrontation on a number of issues.



Code, which criminalises homosexuality. In the context of HIV and AIDS, the repealing of Section 377 became a health issue, involving an obstacle for men who have sex with men (MSM) from coming forward openly to seek support for information, testing, counselling and other services, while the State was primarily looking at Section 377 as a law related to certain freedoms. Section 377 embodies a tension between freedoms, where one does not want the State to intervene (i.e., people of different sexual orientations have the freedom to live in peace and dignity without intervention of the State) and rights, where one does want the hands-on intervention on the part of the State.

Dr. Das emphasised that, in multiple ways, any kind of rights campaign involves multiple political contexts. Power relations and role of the State need to be understood. The history of rights-based struggle in India is reflected in the understanding that different alliances and NGOs have on this issue.

Dr. Das gave an outline of the Right to Health movements and alliances. Right to Health was largely articulated in the post-World War II era. It occurs as Article 12 in the International Convention on Economic, Social and Cultural

Rights (ICESCR), and is further reinforced in the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), Convention on the Rights of the Child (CRC) and the International Convention on the Elimination of all forms of Racial Discrimination (ICERD). The slogan of Health for All, and a commitment towards health for all people by 2000, was adopted in the Alma Ata Declaration made at the International Conference on Primary Health Care. Even the decision to hold the conference at Alma Ata (presently Almaty in Kazakhstan) represented a clash between the socialist and capitalist ideologies at the height of the Cold War; with the then Union of Soviet Socialist Republics (USSR) bidding to hold the conference and providing a \$ 2 million grant for the purpose.

However, within a year of the Almaty Conference, the notion of “Right to Health” was in effect, dismantled in global discourse and priority, as the World Bank and the IMF introduced “structural adjustment programmes” (SAP) in 1979. As the two Bretton Woods institutions gained a toehold, the WHO became less influential, and the Right to Health was replaced by an emphasis on selective primary health care. For example, the focus on child health as a whole gave way to immunisation programmes, which were seen as practical and doable. Dr. Das warned that the manner in which a right is positioned could make all the difference in terms of how that is translated into policies, programmes and practices. In the 1970s, the focus was on family planning, rather than on health. In the 1980’s, the positioning of health changed from that of a social good to a commodity that can be traded at a market price. Although General Comment No. 14 of the ICESCR, introduced in 2000, articulated the, “The right of everyone to the enjoyment of the highest attainable standard of physical and mental health” and introduced the AAAQ Framework (Availability, Accessibility, Acceptability and Quality) to determine the standards of the right to health, the shift from the 1960s to the 2000 has been one from a focus on health, to one on healthcare, which is seen as doable.

As a lesson from the example of health sector change away from rights, Dr. Das suggested that in the case of the Right to Water and Sanitation as well, campaigners would need to worry about the how water was positioned both by international bodies and national policy makers, including international and national NGOs and Networks, track changes in these positionings, and support or counter them as necessary in keeping with the needs of securing the entitlements of the poorest of the poor. This was a role that the India WASH Forum was most suited to perform as a coalition.

In India, the Jan Swasthya Abhiyan was part of the mobilisation around the world in the form of the People’s

Health Movement to review progress on the Alma Ata Declaration of 1978, by which civil society tried to hold governments to account on their performance. Although the Alma Ata Declaration was later diluted and articulated differently by multilateral agencies, the JSA takes inspiration from the original declaration. Some of the highlights of the campaign have been the development of the Indian People’s Health Charter and a valuable collaborative partnership with the NHRC, by which five regional and one national public hearing on the Right to Health Care and violations of this were held. The Jan Swasthya Abhiyan was also able to contribute substantively to the development of the National Rural Health Mission (NRHM). Unlike other large health schemes in India, which were largely developed with support from bilateral agencies like USAID and DFID, and multilateral agencies like the UN bodies, the NRHM was largely indigenously developed, with extensive JSA advocacy ensuring many pro-people elements.

Without adequate funds, systems and monitoring, a right remains a piece of paper. The JSA has started the People’s Rural Health Watch, a decentralised civil society monitoring mechanism to monitor whether people are getting better health services with the implementation of the NRHM, and whether the strengthening of the health infrastructure in the country is happening in alignment with the interests of the people.

Dr. Das also said that certain issues raised by critics of the rights approach were also worthy of consideration.

The rights approach tends to focus on the individual and the state, and ignores structural issues

In the health campaign, structural issues have had a major role to play. Eighty per cent of health services are in the private sector and there are more doctors trained in India who are now working abroad than in India.

The rights framework looks for solutions within the neo-liberal market economy paradigm, but does not seek to challenge the paradigm itself. Again, in the case of seeking solutions to the issues of water and sanitation, most efforts have been within this paradigm, and have not sought to challenge the assumptions.

There has been inadequate integration of the efforts of campaigners for different sets of rights. For example, in the health sector, campaigners for what are referred to as “third generation rights” (including sexual and reproductive health rights, and the rights of lesbian, gay, bisexual and transgender communities) have been inadequately integrated with work for the right to health care. There is

an appreciation of each other's positions, especially in the context of HIV and AIDS, but greater integration is necessary. Such issues may exist in the water sector as well, and may need to be explored.

Finally, Dr. Das made the point that if people are to keep faith with a rights campaign, practical efforts that provide solutions even in the short-term for people's immediate problems must be undertaken alongside the longer-term advocacy efforts. Speaking as a medical practitioner, he said that as it stands, the Draft National Health Bill 2009 asks

for a lot of systems and structures to be put in place before, practically, health services are improved. There is a danger, that in asking for such a lot of preliminary work before effective action on improved health care is undertaken, the Bill will become like another Directive Principle of State Policy, and that the people will lose faith. In the case of the Right to Water and Sanitation as well, as this was an early meeting to decide on the campaign, it was important to simultaneously work on practical measures to improve access, affordability and quality so that people will continue to have faith.

## Campaigning towards the National Rural Employment Guarantee Scheme

**Ms. Dipa Sinha**

Standing in for Jean Dreze, who was unable to be present, Ms. Sinha began her presentation with a caveat that she was not familiar with the water and sanitation sector. However, she would present a brief account of the events that led up to the National Rural Employment Guarantee Scheme (NREGS), for the participants to draw lessons or relate to experiences related to water and sanitation. She also made a distinction between the NREG Act (NREGA) and the Right to Work, with the NREGA constituting more of a social support net than a full realisation of the Right to Work, for which there had been campaign efforts through the 1980s and '90s.

In 2001, India had surplus food grains, stored in Food Corporation of India's (FCI's) godowns throughout the country, she noted. However, 2002 and 2003 were drought years, and there were starvation deaths in the country. Meanwhile, the People's Union for Civil Liberties had, in 2001, filed a writ petition in the Supreme Court whether the Right to Life as laid out in Article 21 of the Constitution included the Right to Food. In its response, the Supreme Court issued directives that the various food for work schemes of the government be implemented immediately. Before the general elections in 2004, the campaign on Right to Work convinced the major political parties to include provision of employment as a priority in their election manifestos. The UPA Government that came into power included the provision of a legal guarantee for employment in its Common Minimum Programme; however, this had been watered down to a guarantee of a hundred days of work per household, Ms. Sinha noted.

A number of strategies were employed in building support for the employment guarantee scheme. Collaborative links were formed between over a hundred organisations and



networks, (including the Mazdoor Kisan Shakti Sanghatan, All India Agricultural Workers Union, National Federation of Indian Women, the National Campaign Committee for Unorganised Sector workers, National Association of People's Movements, etc.) to form a broad coalition called People's Action for Employment Guarantee, she said. In 2005, several coordinated actions took place, almost once a month, to advocate for the scheme, including a rally, two conventions and signature campaigns from the districts. A Rozgar Adhikar Yatra was organised, which was flagged off in Delhi and travelled to ten states to obtain support from local organisations and people's movements, and this helped to attract a lot of media attention and public support, Ms. Sinha pointed out.

The National Advisory Council had a few members who were already members of the Right to Food campaign, and hence this became a space which could be used to further the cause of the campaign. With the support of

the Congress President, Mrs. Sonia Gandhi, who was also chair of the National Advisory Council, a draft bill was prepared. However, Dr. Sinha noted that opposition came in multiple forms and had to be countered. The draft Bill was watered down by the relevant ministries by the time it was tabled in Parliament. For example, the bill had been narrowed down to apply only to below-poverty-line (BPL) families, she said. The earlier schemes like the Food for Work Programme, and the Sampurna Grameen Rozgar Yojana (SGRY) had depended on private contractors for their implementation, and they made a return to the bill even though the draft had attempted to keep them out. There was an extensive debate, Dr. Sinha pointed out, on how much the State can and should spend for the poor. Critics of the Bill, including academics and economists, cited statistics suggesting that poverty and unemployment were going down (the latter supposedly having come down to 1%) and hence such a scheme was unnecessary, she added. Others quoted Rajiv Gandhi's statement on how only 15 paise of every welfare rupee spent on the poor actually reached them, she said, adding that the effort at providing an employment guarantee was soon being termed as just another opportunity for corruption. Still others, she recalled, maintained that the focus would be on digging mud, and no assets would be created. However, a mood was created in the country whereby thousands of people working on the livelihood issue were willing to come together and present a united front that this was the minimum they were willing to accept, said Dr. Sinha. Secondly, when the Bill was

placed in front of the Parliamentary Standing Committee on Rural Development, the Committee listened to almost 200 depositions on different aspects of the Bill. Following this, the Standing Committee reversed many of the dilutions made by the ministry, and the bill was passed in a form roughly similar to the earlier NAC bill.

Dr. Sinha explained that many of the campaign materials were available on the website of the Right to Food campaign, and that a film on the campaign, available on the same website, would also provide participants with a clearer picture of how the campaign evolved.

Once the legal framework is established, a monitoring and grievance redressal mechanism is central to its effective functioning, she pointed out. This is where the Employment Guarantee Scheme had failed. Although these functions were supposed to be addressed by a Central Employment Guarantee Council, and State Employment Guarantee Councils, and these bodies have been largely set up, in effect, these bodies "have no teeth at all" and only make recommendations, she added. Hence, when there are delays in the issue of job cards, or no payment for work done, there are few systems for this to be addressed. The functioning of the scheme appears to be improving year by year, but the lack of a grievance redressal mechanism with teeth is one of the greatest drawbacks for the people who need these entitlements, and this could be something the Right to Water and Sanitation campaign can learn from, concluded Dr. Sinha.

## Discussion on Session 1

### Keynote Address and Campaigns on Right to Education, Health and the Employment Guarantee Scheme

**Chair:** Depinder Kapur

Thanking the presenters, Mr. Kapur noted that all the presentations had focused on issues of articulation of the right (how? What are the key issues?); negotiation (who with? How? Who will be the leaders?); enactment, enforcement and monitoring; and what next? (further amendment, re-enactment, and enforcement). He called for questions from the participants and the presentations triggered a number of questions.

Mr. Lourdes Baptista of WaterAid observed that most of these campaigns had evolved over several years, and sought insights into key elements that need to be taken care of while organising the campaign.

Mr. K. J. Joy of SOPPECOM, Pune, pointed out that for many of the campaigns, alliances had been built with



mass-based groups, trade unions, etc. He enquired how the campaigns had gone about building these alliances

and what were some issues that came up during alliance-building. He wondered whether building such alliances would be critical for the water and sanitation sector.

Dr. Ishaprasad Bhagwat of WaterAid noted the possibility for points of overlap between the water and sanitation sectors and the Right to Education Campaign (in terms of providing water and toilets for schools) and the Right to Health Campaign (in terms of behaviour changes necessary among rights claimants).

Mr. S. C. Jain of AFPRO raised the issue of the multiple uses for water, and enquired whether the campaign would be able to limit the focus to drinking water.

Dr. Meenakshi Sundaram of India WASH Forum remarked that the Right to Information had created a substantial bureaucracy to ensure implementation and monitoring, and wondered whether the new Right to Education had resulted in the creation of a similar bureaucracy.

Mr. Ramesh Kikkeri of Sri Vivekananda Youth Movement and FAN-Karnataka made the observation that the Right to Food should also include a component on the right to water. Issues like the contamination of water by the run-off from pesticides and solid waste management would have to be considered.

Smt. Sudha of MARI and FANSA requested the presenters on the campaigns on the Rights to Health and Education to provide insights into how they had evolved the definitions of these concepts. In the case of water, this was an exercise which would have to be undertaken very carefully, lest it lead to a greater commodification of water, and leave loopholes for the government to evade responsibility, especially with respect to aspects like water quality, linking these with affordability.

Providing a first round of answers, Dr. Abhijit Das said that one of the first tasks for the Campaign on the Right to Water and Sanitation, especially for the lead members of its core group, would be to define its anchor and scope of engagement with the Right to Water and Sanitation.

- Would the RTWS campaign/alliance position itself within the neo-liberal market economy? This would imply that the campaign does not set the terms of engagement, which are already set by the nature of the market, but only tries to ensure that within this market, people in poverty get their fair share.
- Alternatively, the campaign may seek to challenge this paradigm itself, in which case, the conditions

of engagement would themselves be affected. An example, he said, would be of disability rights activists challenging lack of fair access to malls, but not challenging the mall culture itself, in which case the rights-related action would be identifying itself with a certain class character.

Another early task would be to decide who would initiate the campaign and who would lead it.

- Would it be the rights claimants themselves? Or activists and advocates? Or duty bearers? In the case of the HIV campaign, the rights claimants have an established role. However, the initial leadership had a certain class character.
- In the case of the water sector, the presence of the Secretary and senior officials of the Department of Drinking Water supply implied that duty bearers were also taking leadership roles, which was unusual.
- The Campaign on Right to Water and Sanitation would have to consider how to bring rights claimants into leadership roles, and how this would fit in with the character of the movement.

A response that the RWS Campaign should anticipate is that of paternalism – “But we have been talking of water all along as part of basic needs. What is so different that it needs to be talked of now as a right?” Dr. Das clarified that the difference was one of greater entitlement, greater transparency, and more space for monitoring and evaluation. However, who would do this? Would it be done by the bureaucracy? Or by the citizens? It was important to remember that the bureaucracy was designed on the British colonial model, which does not come from a rights perspective. The same is true of the political establishment. The Indian people can choose their representatives, but as long as these representatives do not thoroughly reflect the people’s needs and aspirations, there will be a continuation of the concepts and practices of the *mai-baap sarkar*. Manuals to implement the right would be available, what would be more difficult would be to define the political context of the struggle, to determine whether the campaigners wanted the basic political power contexts to shift.

Dr. Abhijit Das again emphasised that it was important for the leaders of the campaign to be aware of systemic and structural contexts. For instance, for a long time, the UN agencies had showed no interest in reproductive health, which was an agenda that was home-grown in the south. He expressed the opinion that the North tends to look at rights

as part of a civilising agenda for the South, whereas the South can see it as part of being a more politically vibrant society. It was important to identify the leaders and opinion makers who needed to be influenced in the short, medium and longer-term – who needed to be influenced now, and who would be there in three years' time.

Dr. Vinod Raina said he was fascinated to see government servants negotiating with civil society to help form something that was going to create so many problems for them! There was no such precedent in the Health or Education sectors; so he termed the government response at this meeting “wonderful”. Providing a historical perspective to the Right to Education Campaign, he noted that although the immediate trigger for the energetic campaign had been the Unnikrishnan judgement, the Right to Education had its seeds in the Right to Education law passed by Britain in 1870, which inspired the National Movement towards a similar initiative in India. Gopal Krishna Gokhale had issued a call for a similar law in India in 1911, and some of the princely provinces and presidencies, including Baroda and Bombay did bring in Acts, which did not have the finances to make them enforceable and became null and void. To Gandhiji's articles in the Harijan in 1937, calling for universal education, the government response was that no funds were available. When Gandhiji insisted that funds be found, the response was that the only way to fund education would be through taxes from liquor. Gandhiji then said that he would give up the call, if liquor was the only source to fund education. He then developed his “Nai Talim” proposal for self-supported education.

Dr. Raina made the point that funding continued to be a critical issue, and it was important for the campaign to get its numbers right. The cost of enforcing the Right, cost of not enforcing the Right in terms of losses incurred, and possible sources of funding should all be meticulously calculated by the campaign. Dr. Raina said that during a meeting with Dr. Manmohan Singh, the Prime Minister had asked campaigners, “Where is the money to fund universal primary education. Do you want the country to go broke?” The campaigners responded that it was pointless to claim nine per cent growth for the country if it could not educate its children, and moreover, that the campaign had calculations to prove that finances could be found. Dr. Singh asked to see the calculations, and presumably, found them sufficiently convincing to go ahead with the initiative. He said there were two things that the campaign had to do. The first was to get the government to do the work they should be doing. For this, the Right to Education campaign had established connections and collaborations with a wide range of organisations, including teachers' unions and political parties. It had garnered local support and held district- and

state-level conventions to build a broad base. It should be possible to accomplish this in about five years time. Once the battle of getting the political establishment to take the right seriously was done, the scene of the action would move to the Finance Ministry and the Planning Commission. It was necessary to have the calculations right for this. His estimate was that the state was subsidising the rich to the extent of about 14 per cent of the GDP annually. This must be tracked, identified, and presented to the government to buttress the case for the rights of the poor.

Raising the question of why the Right to Education campaign had secured so much support, Dr. Raina pointed out that 30 years ago, it was possible to send children to a government school and get them an education. Now, the public perception of government school was of a “toota-phoota” school to which people did not want to send their children. The fact was that education in India had developed along the fractures of society. There was a caste system among the government schools themselves, from the Navodaya Vidyalayas, through the Kendriya Vidyalayas, through the better class of corporation schools, to the “toota-phoota” schools.

Defining the word ‘school’, he said anything from a “Shiksha Karmi” who was paid Rs. 800 to teach under a tree to Delhi's totally air-conditioned G. D. Goenka International school could be termed a school. The Right to Education Act has laid down a Mandatory Schedule which lists the basic minimum acceptable provisions for a school to qualify as such – anything less is not recognised by the law. The Madhya Pradesh government had, as a policy decision, employed more than 120,000 para teachers, many of them unqualified, and assigned the task of educating children, especially children from rural and deprived sections through them. It even won acclaim from World Bank and others for providing ‘cost-effective’ education. At a stroke, the new Right to Education Act did away with such inequity.

Hence, the second task for the campaign would be to work out how to make the right justiciable. The issues of water were very complex, and crafting the right or the Act would require deep thinking. How would campaigners advocate for a justiciable system in which disputed matters can be adjudicated in a Munsiff's court? How would they get the court to respond and rule? What kinds of punishment would be appropriate? One of the major drawbacks of the NREGA is the lack of justiciable elements which make it impossible to take cases to a munsiff's court. It is only possible to carry out social audits, and take the evidence back to the government in the hope that it will act. Hence getting this right early on was critical. In the case of education, campaigners had advocated for education of

equitable quality, not universal quality. Thus, the kind of education that would be appropriate for a child in a tribal area would also have to be taken into account. Defining quality education was a challenge for India given our diversity, the Campaign therefore took the constitutional guarantees as its guide to “quality education”. Values of the Constitution include secularism, and respect for the environment. It was necessary that children secure education without it generating fear, trauma and anxiety. Education should be child-centred, based on activities and exploration. The Law Ministry had objected, saying that these were not justiciable. How would a judge rule on these matters? The campaigners had responded by asking the Law Ministry how they made other human rights laws justiciable. It was possible to get professionals who could provide yardsticks to advise the judge. For instance, psychologists could testify on issues related to fear and trauma in a certain educational situation.

Dr. Raina held that this debate might be very useful in the case of the RTWS campaign as well, in which there would be issues beyond physical infrastructure. There were many intangibles in water. For instance, water was a cultural product as well, as evident, for example, in the reverence for a river. Making these intangibles justiciable would be a challenge for the campaign.

To Dr. Meenakshi Sundaram’s question of the potential for a burgeoning bureaucracy consequent to the granting of a right, Dr. Raina said that no new bureaucracy was going to be created, rather, the existing system was going to be used. As the National Commission for Protection of Child Rights (NCPCR), a quasi-judicial body, already existed, it was decided that this would be the oversight organisation. With regard to monitoring on the ground, there was the potential for turf wars between PRIs and Teachers Unions. For example, in areas where PRIs are extremely politicised, there was the potential for victimisation of teachers. The decision, inspired by the Mothers’ Committees of Nagaland, was to entrust the task of monitoring to those most concerned with the child’s welfare to, the parents. Ground level monitoring will happen through School Management Committees, of which 75 per cent of the members would be parents, and 50 per cent women. If there were violations, the matter could be taken to court. In the case of water and sanitation, there are already many government departments involved. The RTWS campaign should try to ensure that a parallel system is not created which works in contradiction with existing structures.

Mr. Shantanu Consul observed that diverse uses would complicate the issue of water. The saving grace was that till now, in almost every policy document, the paramount

primacy of drinking water is recognised and stated. To that extent, there is a history which the campaign can draw upon.

Mr. Satish Mendiratta of JKMIC suggested that in the interests of sustainability, any reforms must include measures for community management.

Dr. Raina explained that he appreciates the sentiment of community management. But far too often, the community is given responsibility without powers or resources. It is important to nuance the notion of community management. A situation must be prevented in which the government says, “We will give you a Rs.800/pm teacher: you provide the rooms, monitor, etc.”, which was roughly what the Madhya Pradesh government did. Education had suffered because of this approach, he said. In a rights-based scenario, the minimum investment in infrastructure and service costs of teachers and care givers should be provided by the government, after which the community can take care to sustain and improve it.

To Dr. Ishaprasad Bhagat’s question about the overlap between the rights to education and water and sanitation, Dr. Raina shared that the Right to Education Act defined the basic provisioning of the school: drinking water and separate and functional toilets for boys and girls. The new District Information System for Education (DISE) was also collecting information on functional toilets now, rather than just toilets. The overlap is not a problem.

DDWS Secretary Consul again raised concerns about damage to the federal structure of the administration, as more and more responsibilities, including financial responsibilities, get transferred to the central government. Even for subjects on the Concurrent List, the relation between the Centre and states was rarely clear, and water is a subject on the State List.

Dr. Raina clarified that often, the issue was one of funds. For the Sarva Shiksha Abhiyaan, the funding pattern was in the ratio of 65:35, with the state paying the smaller fraction. While the states tended to demand more money, the Planning Commission tended to take the view that the states had adequate resources which in many cases got spent on issues like providing colour TVs for citizens, rice at subsidised rates of Rs. 2/kilo, etc. In the matter of financial allocations for the implementing the Right to Education, campaigners had pointed out that states would vary in the extent of support they required. Kerala and Bihar would be in very different starting positions, in terms of the resources needed to implement the Act. Hence they submitted that states with particular needs could directly petition the Finance Commission, and this suggestion had been accepted. Many such innovative strategies would be

required in determining how to raise the outlays required to implement the RTWS.

Mr. Consul asked what the level of participation of rights claimants in the Right to Education campaign had been. Dr. Raina said that there had really been no rights claimants, only advocates, because there are no strong parents' movements in the country. Several crores of Indian children are still first-generation school-goers. Hopefully, participation in School Management Committees will create the kernel for a parents' movement. He further noted that while rights claimants in the form of Water Users Associations exist in the water sector, a similar difficulty in identifying rights claimants might be anticipated in the sanitation sector.

Sri Vijay Mittal of the Department of Drinking Water Supply wondered whether the movement in favour of a rights-based approach was giving the central government more powers, as against the effort to decentralise. By seeking more justiciable rights, citizens were burdening the government with more rights and responsibilities.

Dr. Raina opined that this was becoming necessary because of the increased role of the market. The community was not able to take the onslaught, and the State was being called upon to play a role in balancing the community and the market. The call for greater State responsibility was not in terms of giving away customary rights to the government, but ensuring that these were safeguarded. There had been instances in which communities had become complicit with the market (as

had happened in the water sector in Bolivia) but then, had not been able to cope.

Depinder Kapur concluded the discussions noting there was much to learn from the experiences of other campaigns. One critical lesson is that Acts can be a formality and divisive, and the formulation in sudden haste of some Acts are now being questioned. For instance, advocates/activists are seeking a complete redrafting of the Unorganised Workers Social Security Act 2008 saying that it is only an amalgamation of existing schemes, with no separate funds or teeth or social security provisions and effective mechanisms. While one set of advocates representing activists and small organisations was challenging the Act, SEWA was supporting it saying that this was the best we could get and a good starting point. Secondly the question of leadership, who will invest the time and energy, who will lead it and how will the agenda or the charter of the Rights Campaign be decided. As Dr. Das had highlighted, understanding of the campaign character and its anchor and the understanding of the advocates role is critical. An international NGO or even a National NGO that is not representing a constituency of Rights Claimants, should not assume campaign leadership. It can only be a catalyst with very humble and supportive form. Thirdly if Advocating Rights into Law is critical work, how much resources and commitment does this demand? In the case of the NREGS, advocates appear to have done or be doing all the work necessary for enactment, monitoring and enforcement, acting simultaneously as champions and critics. Studying the trajectories of these campaigns would give the RTWS campaign several useful pointers.



# Session 2: Where does India stand on the Right to Water and Sanitation as a Human Right and a Constitutionally Enforceable Entitlement?

**Presenters:** K. J. Joy (FORUM), Indira Khurana (WaterAid), Narayan Bhat (FAN SA)

**Session Chair:** Depinder Kapur

**Understanding the Right to Water in the Indian Context:** Mr. K. J. Joy (FORUM)

Stating that he shared many of the concerns that had been brought up in the morning, Mr. Joy said that he would try and frame the issue of water, given the special characteristics of the water sector, in the Indian context.

- The diverse and contending uses of water
- How water is extracted and supplied, and the ecological consequences of these decisions
- Who manages water: the community, the state, or private bodies; and how to craft institutions to manage water depending on scale
- The biophysical and the socio-cultural institutional aspects of water

As an aside, Mr. Joy noted that in 2007, when advocates called on the Maharashtra government to restructure irrigation schemes more equitably, the state responded that it would license more liquor shops to raise the money to do this, much as the colonial government had stalled Gandhiji's call for free and compulsory education in 1937. After 70 years, the debates around moral choices that need to be made in securing funds for right-based restructuring, and the responses of the state have tended to be very similar.

Elaborating on the issue of determining norms for domestic water use, Mr. Joy noted that one may well accept the norm of 200 cubic metres per family (of five persons) per annum. Alternately, this works out to 100 liters per capita per day for domestic use. A provision of another 200 cubic metres per family per annum could be made for livestock. Regarding prioritisation of these uses, most states may not quibble with the first priority, personal use. However, thereafter, things become difficult. Orissa lists "ecological systems" as the second priority for consuming water, while in Maharashtra



the second place is claimed by industry, and the third is agriculture. The stated priorities and actual usages may also be different. A classic case is that of the Hirakud dam, which was designed to supply water for agriculture, as there has been increasing allocation for industry.

Further, several tricky questions arise as to how water will be divided between the different priorities. Will we wait till the first priority, water for personal use, has been totally met, before considering the other priorities? Will there be proportional allocation across priorities? Or will the next priority secure water only after the previous one has been met?

Mr. Joy contended that there was need for a clear prioritisation of drinking water over other needs. Even at the micro-watershed level, irrigation needs increasingly tend to take priority. There is a shift in how water sources tend to be used too. Increasingly, surface water from shallow wells is being diverted for irrigation, and water from deeper aquifers (of poorer quality) is being accessed through borewells for drinking. Studies of water governance at the micro-watershed level have revealed that few bodies have laid

down good norms related to the issue of contending uses of water. There is also increasing conflict across different sectors of water uses. Not only is the quality of drinking water getting affected but even accessibility.

He stressed the need for the campaign to examine and understand the context of water in India properly. To begin with, issues related to definitions need to be sorted out. There is the need to distinguish between the Right to Water and Water Rights, which mean two different things. The latter is a World Bank introduced term, which looks at water as a tradeable commodity, you first define ownership to a resource (eg., common property resources or traditional community resources are identified as individual or community owned commodities) and then it is made tradeable. It is also important to de-link water from land rights.

The campaign would need to address five critical issues in relation to water:

1. What is the scope of the Right to Water and Sanitation in terms of quantity, quality, accessibility and affordability?
2. What are the duties and responsibilities of the State and how would these be justiciable?
3. How would issues of ownership, delivery of service and pricing be addressed?

Some issues that need addressing are given below.

- a. In India, surface water is a public resource, but individual/private property rights prevail in the case of ground water.
  - b. Issues of privatisation have to be addressed with respect to the water source, delivery mechanisms and rights and entitlements
  - c. Pricing would depend on perception of water as a social good versus an economic good, and in the recent past, policy has been leaning more and more towards the latter.
  - d. If we accept that we are working within the neo-liberal market economy paradigm, the rights discussion may not have much relevance. Striking a balance will be an important responsibility.
  - e. The “community” is fragmented. We are speaking of imagined communities when we use the term. All too frequently, community-based organisations (CBOs) too are captured by the elite.
4. How does the Right to Water and Sanitation interact with other rights – to Life, Health and Livelihood, for example?

5. How would macro and global factors that impact water be taken into account?
  - a. The triad of liberalisation – privatisation – globalisation
  - b. Supra global institutions, e.g., (such as Gender and Water Alliance, Global Water Operators Partnership Alliance, Global Water Challenge, etc.)

Mr. Joy discussed the importance of keeping certain conceptual aspects open-ended at this stage:

1. Some stakeholders feel the right should confine itself to drinking water; there are others who feel a broader canvas is relevant.
2. Another question relates to what will be the norms for determining the quantity of water as a reasonable Right and how these will be decided. The campaign must determine to what extent it will rely on existing academic literature to decide on norm related to quantity of water. At the same time, it must also examine how it will take into account cultural practices related to water – the situations in Kerala and Rajasthan are quite different. Or will it agree on a range? Alternatively, will it not mention numbers at all, but make a general statement about ensuring a social minimum, especially to the resource poor? Why must there be discriminatory norms across the urban-rural divide?
3. How will the rights framework address the issue of water for livelihood activities? In rural areas, the rights to life and livelihood are much more integrated, and water is essential for the basic production activities which preserve life. Strategically, how will the campaign position itself with regard to this issue?

Practical/operational challenges for the campaign were also enumerated.

1. How will the campaign relate/reach out to other struggles in issues related to water?
  - a. Pollution
  - b. Privatisation
  - c. Dams
  - d. Mining, which affects water sources

The campaign needs to decide how it will position itself with regard to these struggles, obtain the names of organisations involved, and establish contacts and dialogue with the people to understand their perspective.

2. The campaign needs to build a social-political constituency for water, and take itself beyond NGO discourse.
3. There is already some work happening on a Right to Water Security Act. How will the campaign link up to and integrate with the larger issues related to water? It is important that the coalition work, and the two campaigns do not get at loggerheads with one another, as this will affect the credibility of the work. Perhaps one approach is to target the larger aim, but prioritise within it, so that drinking water gets priority, and is first on the timeline, after which, water security will be addressed more broadly. Otherwise, unnecessary divisions may be created among those with similar concerns.

Complexities that would arise in the implementation aspects of a Law

1. Several states have their own laws. For example, there are the Maharashtra Water Resources Regulatory Authority Act 2005, the Uttar Pradesh Water Management and Regulatory Commission Act 2008, the Andhra Pradesh Water, Land and Trees Act, 2002.
2. What kinds of democratic institutions it was going to suggest for implementations.
3. Develop natural resource literacy in the community so that a basic understanding of issues related to water is created. For this, resource materials will have to be developed.

Mr. Joy suggested that the campaign could benefit from the reports of the two sub-groups that the forum for policy dialogue on Water Conflicts on the following two issues.

- One possible expert sub-group could study Equity and Allocation for Ecosystem and Livelihood Needs.

- A second expert sub-group could be created to go into Legal and Constitutional Implications of the Right to Water and Sanitation.

Mr. Joy called on Mr. Suhas Paranjape, of SOPPECOM and the Forum, to add to any other issues that he may not have mentioned; he proposed the following.

- Firstly, the campaign would have to ensure a close link between policy and law in the water sector. Many priorities are left to the water policy of the state. The campaign may have to encroach on this space and include all relevant issues, including aspects which seem non-justiciable now.
- Secondly, in the drafting of the law itself, efforts will have to be made to close all possible loopholes. As an example, he pointed out that many provisions which are pro-people have been included in the Preamble to the Maharashtra Water Resources Regulatory Authority Act 2005. However, these have been left out in the Act itself. In adjudicating on issues, the Regulatory Authority considers the Preamble separate and outside the Act, and claims that these positive elements are “not enjoined on us and we don’t have to consider them.” Such loopholes should be avoided in any law that the campaign is advocating for.
- Thirdly, the creation of such quasi-judicial bodies as the state regulatory authorities is changing the political terrain itself. Until now, the strategy of rights-based campaigns has been to mobilise people’s support to put pressure on political system to respect public opinion. When the authority shifts to these regulatory bodies, we need to think about whether we are shifting the balance in favour of advocates, as against right claimants.
- Finally, the campaign study what kinds of PILs have worked in the context of rights related to water or associated issues.

## Understanding the Ground Realities in Relation to Water and Sanitation

**Dr. Indira Khurana, WaterAid India**

Chair: **Dr. Ishaprasad Bhagwat, WaterAid India.**

Dr. Khurana shared WaterAid’s insights drawn from debating issues related to water and sanitation with their partners, as well as activists working in related issues, like Bezawada Wilson, fighting against manual scavenging, and Biraj Patnaik, working on the right to food issues. It is clear

that the Right to Water and Sanitation cannot be explored except in the context of several other issues. Some of the real issues and challenges that exploring the ramifications of the right would have to contend with will include the following.

1. The perpetuation of the vicious cycle of people in poverty: having inadequate access to water and sanitation, which negatively impacts their health, which in turn contributes to keeping them in poverty.
2. Exclusion from access to water and sanitation, which arise from:
  - a. problems of supply in geographically difficult areas;
  - b. caste considerations;
  - c. reduction in ground water to critical levels in certain areas;
  - d. existing hierarchies and inequities;
  - e. urban needs and priorities, which marginalise rural communities; and
  - f. the many competing demands on limited resources, including those of agriculture, industry and mining.
3. Persistence of manual scavenging, and state denial and unwillingness to address the issue.
4. Scale of the water quality problem, with millions of litres contaminated due to waterborne disease-carrying germs, arsenic or fluoride.
5. Dependence on ground water and competition from irrigation and industry. Nearly 80 per cent of ground water is accessed by rural communities. And about 80 per cent of the ground water accessed is used for irrigation.
6. Impact of climate change. Variability and intensity in rainfall - when an area receives about a quarter of its annual rainfall in about two hours, there is insufficient time for ground water to be recharged.
7. An unresponsive bureaucracy and government.

Dr. Khurana presented a document in which WaterAid had reviewed law and policy related to water and sanitation. She pointed out that there were 22 international covenants which implicitly or explicitly refer to water and sanitation. But in most of them, provision of these basic needs is not mandatory. A review of case law in the High Courts and Supreme Court revealed 44 cases relating to these issues. The cases fell into major thematic areas, including poor water quality, poor sanitation in urban areas, water pollution, depletion of water sources, and water charges. Even in cases where positive directions have come from the court, getting them executed is a whole different ball game that requires almost an equal amount of effort, time and resources, as winning the court case itself.

The document had also made an analysis of 31 RTI initiatives related to water and sanitation, and the results. The overall experience was that following the filing of the RTI, it may be possible to obtain services; however, sustainability of service provision is difficult.

## Understanding the Ground Realities of Water and Sanitation in the Indian Context – The FANSA Experience.

**Mr. Narayan Bhat**

Chair: **Dr. Ishprasad Bhagwat, WaterAid India**

Mr. Bhat said that in the interests of time, he would share the lessons of FANSA drawn from its practical experience in advocacy and action, rather than in terms of its theoretical and conceptual positions.

The major lessons were:

- Need to work with the government and bureaucracy in tandem.
- Joint action strategies, based on collaboration, to be considered.



- The complexities at the local level, considering which stakeholders will be positively and negatively impacted, must be examined
- Work at the micro, meso and macro-levels needs to happen simultaneously. For example, the Andhra Pradesh Water, Land and Trees Act, 2002, is primarily

applied by FANSA to work at the micro-level, but it also creates space to work at the state and apex levels.

FANSA had also made a beginning at influencing national policy through active participation in SACOSAN III in 2008, he concluded.

## Plenary Discussion: Understanding Right to Water and Sanitation in the Indian Context

Mr. Vijay Mittal of the Department of Drinking Water Supply pointed out that this department could be termed the “3% wallahs”, as that constituted the percentage of all the water resources that they dealt with. Although policies state that use of water for drinking is paramount, in effect this primacy is not respected, and different departments, agencies and ministries fight turf wars over water at the apex, state and local levels. In this context, it would be interesting to hear the campaign’s suggestions for the administrative structures to address water issues.

Mr. Lourdes Baptista of WaterAid India noted that work would have to be done simultaneously to develop demand for the right, and to articulate the right. He wondered whether integrating or building alliances with associated campaigns should happen in parallel, or whether the campaign on RTWS should go it alone. He also inquired whether getting the Right to Water and Sanitation was only a matter of implementing existing covenants, laws and policies, or more work is necessary to expand these.

Mr. Joe Madiath of GramVikas suggested that a simple distinction be made between water for life and water for production. The former is a fundamental right, and cannot be compromised or privatised. People can take different issues on the latter. Mr. Madiath also expressed concern that when we speak of water, and say that the term includes sanitation, sanitation tends to fall by the wayside. Just as “he” was said to include “she”, but in fact, never included “she”, until “she” claimed separate space and was repeated over and over again, sanitation would need separate priority. He wondered whether it would be possible to speak of sanitation and say “that includes water too.” “Water is sexy, people want to be associated with it, but no one wants to talk about sanitation.” He also warned the participants that printing a few pamphlets and posters would not be advocacy. There are models which have been proven in the field, and replicated sufficiently. Work needs to be done to convince the government to scale up, since it has been shown to be done.

Mr. Satish Mendiratta of JKMIC suggested that water supply needs to be demand-based and that advocacy should be taken up as part of a sector reform process. For sanitation too, he felt, norms on how much work should be undertaken should not be set. Rather, demand must be created, after which supply could take place.

Mr. R. Murali of MARI and FANSA observed that the day’s proceedings had made it clear that on the one hand, urgent action had to be undertaken to meet the immediate needs of the poor. On the other, work was necessary on policies, guidelines, etc. Where schemes existed, it was necessary to see how they could work effectively and transparently, especially with respect to service delivery for the poor. He further compared the Right to Life in the Constitution to a seed bank. However, until the individual right is planted, it cannot grow into a tree. The campaign for a separate right was necessary to work out nitty-gritties, build institutional mechanisms, and secure allocations to address the challenges related to water and sanitation.

Mr. Joy observed that a major challenge in the sector was the fragmentation at both the policy and the institutional levels, with different bodies addressing irrigation, tank systems, watershed development, pollution, etc. In comparison, he suggested that a comprehensive policy such as the European Union’s Water Framework Directive would be very welcome. He suggested that examining this would be a great learning, though, obviously, it could not be copied into the Indian context. He also observed that turf wars occurred not only at the state and national levels, but even at micro-watershed levels, between Water Users’ Associations, Pani Samitis, etc. He suggested the crafting of a nested institutional framework, with water-user associations being federated into organisations at the micro-watershed, watershed, sub-basin and river basin levels. One centralised authority could ensure integrated functioning at the apex level, while below that would be multi-level organisations.

Mr. Joe Madiath cautioned that instruments crafted in the North may recognise water as a right, but still be market-based. He suggested that the dimensions of any legislation be decided within the country. Mr. Lourdes Baptista concurred, saying that the political contexts of international covenants must be examined, and not accepted at face value. Institutions will grow out of the created legislations, so adequate attention must be paid to them. Mr. Joy pointed out that the very fact that more and more states are bringing in regulatory mechanisms implies that the government is acknowledging that there will be other players, including private players in the sector. He also noted that certain existing legislations have an impact on water body pollution and source protection. The campaign will have to study how these are actually functioning. Likewise, the functioning of certain authorities, for example, the Pollution Control Boards, will also have to be reviewed.

Mr. Narayan Bhat suggested that the campaign would have to live with the reality of federal structures, and work collaboratively with the government.

Dr. Indira Khurana shared that there was a recommendation by the Independent Expert to the UN on Human Rights Obligations related to Safe Drinking Water and Sanitation to consider sanitation as a separate right, and not just a part of the Right to Water. It was important to consider independently what the State should do and what it need not do, and not just accept the prevailing trends in the multilateral agencies.

Mr. Satish Mendiratta pointed out that once the demand for sanitation is increased, the demand for water would also increase.

Mr. K. J. Joy further refined the point made by Mr. Joe Madiath, who suggested that a distinction should be made between Water for Life and Water for Production. He suggested that, rather than making that simple distinction, it was important to acknowledge that, especially in rural areas, water for life would include not only water for drinking and personal and domestic needs, but also for basic sustenance. This should be distinguished from Water for Economic Surplus Generation. This distinction should affect pricing too. The former should be subsidised for the poor, whereas the latter should not be subsidised.

Mr. Narayan Bhat pointed out that the detailing could be very complex. Consider a person from the urban slums who accesses water and sells it to other people in poverty who are water deprived. Would this be considered water for life or water for production?

Mr. Ramesh Kikkeri suggested that the campaign may have a larger water literacy task on its hands. For instance, farmers who use borewell water to grow paddy could be said to be raping the earth. Promotion of organic methods is necessary in areas where this is happening. More broadly, water literacy should be promoted from the primary level.

Mr. K. J. Joy opposed Mr. Mendiratta's contention that water supply should be demand-driven, stating that such a stance could be against the spirit of what the campaign wants and the rights-based discourses. He suggested that a basic social minimum should be taken care of regardless of demand; the rest of the supply could be based on demand, pricing, etc.

Supporting Mr. Joy's stand that supply of a basic social minimum of water and sanitation should not be based on demand, Mr. Joe Madiath pointed out that when Sati was abolished, it was not done in response to a demand from women. Often, when there is a societal need, it has to be provided, and later society internalises this. Likewise, there was also a need for social marketing even for basic rights like sanitation. He recalled that noodles do not constitute traditional food for Indians, and the manufacturer spent enormous sums of money to create the demand for Maggi noodles.

Mr. Suhas Paranjape sounded a warning note and said that international covenants had components which went against the Indian grain, and they must be examined carefully. He also asserted that while the campaign could largely think in terms of working collaboratively with the government, there would definitely be issues on which the campaign would have to take a stand against the government and oppose it. For instance, in the case of certain regulatory mechanisms being set in place, the cure could prove worse than the disease. The Maharashtra Water Resources Regulatory Authority was currently seeking to formalise the rates at which certain sections of society are getting water as entitlements. The authority has been given the discretionary power to do this, and at a stroke it can do so. Even though the act of fixing entitlements appears to give rights, in effect, what it means is that existing inequities get legalised. Citing another such instance, the privatisation of the Nira-Deoghar dam has been temporarily held up on procedural grounds, but there is no fundamental change in the stance of the government. At any time, the privatisation of the dam can occur.

To a question from Mr. Ram Reddy about the current status of the litigation related to the Perumatty gram panchayat versus Coca-Cola, Ms. Latha of FORUM said that when the Kerala High Court said that the panchayat did not have the

authority to revoke the license of the Coca-Cola plant, the plant was closed down through an order of Kerala State Pollution Control Board saying that the company was not complying with pollution control norms. A Special Leave Petition has been filed before the Supreme Court challenging the contention that the panchayat did not have the authority to revoke a license that had been issued, and an interim order is expected. Also, although the company was now supplying drinking water to the affected villages, the villages were also seeking compensation for the company for agricultural lands which had been irretrievably damaged by the sludge that had been sold to farmers by the company in the guise of fertiliser.

At this stage, Mr. Depinder Kapur observed that most of the discussions related to designing the campaign had centred around five themes.

- Conceptual anchors
- Structure
- Alliances
- Leadership
- Developing the campaign's own perspective.

He noted that over the course of the campaign, more groups with their own perspectives were likely to emerge, so seeking clarity on the last point was a worthwhile effort. He requested the participants to think in terms of next steps for the campaign in the post-tea session: where would the effort be anchored, how would the issue that the present meeting was attended entirely by advocates and practitioners be handled, what tasks should be undertaken, etc.



## Session 3: Plenary Discussion on Next Steps for the RTWS Campaign

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**Chair: Mr. Depinder Kapur**

Setting the stage for the last session, Mr. Depinder Kapur, observed that although there appeared to be some concrete directions coming from the government, and particularly the judiciary, in favour of the RTWS, these were merely in the form of directions to and strictures against, governments and departments, constitution of committees and reviews. Do we see this as judicial failure, or do we take the optimistic view that there are areas of support emerging from the judgements, he asked.

Secondly, he drew the attention to rural sanitation and norms for urban sanitation and said that the way rights were seen in this context had not yet been discussed in the meeting. Although some quantitative norms exist for water, there are no norms set for sanitation that we can then fight for as entitlement and Rights to be made into an Act. More than 50 per cent of Mumbai's population lives in the slums and many other city slum populations are not even recognised as slums (unauthorised colonies, peri urban settlements, villages, resettlement colonies, etc.). Minimum urban provisions and norms for the city, are denied to this section. There are no separate norms that the Municipal, State or Central government advocates and implements for sanitation for community toilets and public toilets for our cities. While rural sanitation remains in the realm of individual choice and some physical and social and economic considerations that have a bearing on norms. Issues of water availability and cost of construction, migration and non use, how will these be factored in the Right to Sanitation? Compared to the rural areas, norms in urban areas are easier to define. Minimum norms on urban toilets – toilet seats per slum population, no displacement without individual toilets, community-managed toilets with state support if they are unviable at a certain level of usage – no norms exist and even NGOs are not advocating for norms that are so vital. The recent introduction of Community-Led Total Sanitation approach questions the need for any standardised norms for toilets in rural areas and sees the challenge as entirely one of behaviour change.

Inviting the participants to continue the discussion, he asked participants who had not spoken hitherto in the course of the day to share their experiences and concerns.

Smt. Lata Shrikhande of Shelter Associates shared that in Pune and Mumbai, advocates have got the government to agree that whenever a slum is forcibly relocated, the new accommodation must provide individual toilets. Where slums were being re-developed in situ, and there was a space constraint, community toilets were being created. Where slum re-development was creating space, as in Dharavi, the government was being pressurised to produce individual toilets.

Mr. Nithya Sahayam of FAN-Tamil Nadu said that apart from the protests in Kanyakumari District against water being diverted for the Koodankulam nuclear power plant, no rights-based movements related to water had been taking place in Tamil Nadu. It was necessary to work to build up meaningful community participation in the campaign. Often, members of water user associations are not even aware they are in the association, and these need to become representative and effective bodies.

Mr. Bibhash Chandra from FAN-Jharkhand said that most towns and villages in Jharkhand subsisted on less than the 40 litres per capita daily norm. Nor was there a State Water Policy. He sought support from the campaign to examine what modifications to the National Water Policy were necessary for states like Jharkhand. Grassroots coalitions need to be built on the RTWS issue in states like Jharkhand, and this in turn should lead to a network of organisations at the state level working on the issue.

Smt. Latha from FORUM contended that in seeking to implement the RTWS, issues of entitlements would have to be balanced with issues of boundaries. Safeguarding the rights of one community should not be at the cost of depriving another community of the same rights. A case in point is the transfer of water from the Viranam lake to Chennai city. Implications of transfer of water resources

from one catchment area to another, from one sub-basin to another, and inter-basin transfer would all have to be carefully considered.

Dr. Indira Khurana and Mr. Darryl D'Monte warned that the fact that South Africa had set a norm of free water of 25 lpcd should not be regarded as worthy of emulation without considering all the other implications. Norms about a social minimum would have to be calculated carefully, and implementation would have to be monitored. In South Africa, poor, black communities in Soweto were forced to take the city administration to court after the installation of pre-paid meters for water consumption above the 6kl per household norm caused significant hardship and discrimination. In one community, the installation of such meters led to a cholera epidemic, as poor communities, unable to pay, began accessing untreated water from a nearby stream.

Mr. Suhas Paranjape raised the issue of safeguarding the interests of "intangible right-bearers." Who would be the right bearers of the ecosystem and of future generations? If used indiscriminately, water rights would endanger the rights of these important right-bearers. Assessing and limiting water usage to safeguard the rights of such entities was also very important.

Mr. Satish Mendiratta felt that speaking of rights were a way to give up powers of control on local resources to the government, and advocated that it was better to talk of demand and affordability.

Mr. Ramesh Kikkeri protested that often poor and rural communities did not have the political voice to get their demands heard. Water from the Nugu dam flows past Gandathur village on its way to Bangalore. Earlier, some water from the canal would percolate into the ground. However, now the canal was being lined, so that more water could reach the city. The demands of communities close to the water source were being deliberately set aside.

Mr. Depinder Kapur intervened, and reassured the group that no one was saying that the state should provide everything for no payment. The point was that we cannot rely only on the criteria of demand and affordability to ensure equitable access to basic needs.

Mr. S. C. Jain of AFPRO suggested that water literacy and empowerment of communities should be raised to a level where they invoke self-regulatory norms. He cited the instance of 30 villages in Yaval and Bhusaval taluks in Jalgaon district. When the ground water situation in five of

those villages became critical, the other 25 villages decided that these villages should not draw ground water and allow the aquifers to recharge, and the 25 villages would take care of the water needs of all 30 villages.

Smt. Latha of FORUM observed that to make such decisions, local communities also needed support in the form of accurate information regarding their water resources. She pointed out that if the Perumatty gram panchayat had known the status of their water resources, they would probably not have allowed Coca-Cola to obtain a license to set up a plant in their area in the first place.

Smt. Sudha of MARI and FANSA pointed out that the campaign would also have to identify areas where difficult interventions are necessary, especially in emergency and critical situations, when tough decisions will have to be taken. She cited the instance of Chittoor district in Andhra Pradesh, when during a period of extreme water shortage, farmers decided to use the scarce water to keep livestock alive, rather than for irrigation. Their rationale was that the land would remain there for them to farm the following year, even if it lay fallow for a year. However, if their livestock died, they would be unable to replace them. When there were conflicting needs, drinking water should take priority. She cited the instance of farmers in Guntur district protesting the transfer of water to Prakasham district because they wanted to protect their crops, at a time when Prakasham district was reeling without drinking water. The government can compensate for losses of crops, but not for loss of life.

Mr. Murali and Mr. Joy brought the group's focus back to the need to crystallise a plan of action.

- As a first step, the group must prepare a few discussion papers to clarify the stances the campaign would take: for instance, would it be worthwhile pursuing the Right to Water and Sanitation as a separate right, or would it be better to look at it as part of a larger campaign for the Right to Water Security.
- A second step would be to arrive at a strategy for campaigning, perhaps a small group could identify allies for the campaign.
- A third step might be to decide on short-term tasks for immediate action, e.g., commission studies to explore norms for sanitation for urban slums; critically look at targeted water programming and the reasons why people don't take up schemes for water and sanitation where they exist (is it because of capital contributions,

operations and maintenance costs, or other reasons); or analyse the roles played by consultants and consortiums in the water and sanitation sector in India.

Mr. Murali reiterated the need for efforts to ensure a grassroots process with people's leadership.

Smt. Latha suggested that organisations working on water privatisation, grassroots organisations fighting for the right to water, and communities affected by upstream and downstream issues should be contacted, lessons learnt from them and avenues explored on how best to include them in the campaign



## Session 4: Summing Up Joint Actions that the Group had Agreed Upon

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The following was arrived upon for taking from this Workshop on Right to Water and Sanitation:

1. Crystallise organisational commitment to Right to Water and Sanitation as a joint Statement of Intent by WaterAid, India WASH Forum, FANSA and FORUM. A joint statement of one or two pages reflecting the understanding of the four organisations on what RTWS means for us and a reflection of commitment to take this forward.
2. Develop a Campaign Strategy based on a clear commitment to the larger purpose and anchoring of the alliance/campaign strategy.
  - a. Identify a core group for this. The four organisations to consider expanding this group now or later. The next meeting of the campaign could be organized back to back with the meeting that the Forum would organize in January 2010 to discuss the reports of the two sub-groups mentioned above in page 34.
  - b. The two tasks of producing the reports for the next meeting in November 2009 with FORUM and WaterAid.
  - c. Once the campaign is decided facilitate the creation of a Campaign Coordination team, with reasonable distribution of advocates and practitioners, and explore ways to meaningfully include grassroots voices and rights claimants.
  - d. Facilitate creation of additional teams of advocates and organisations to support the Campaign Coordination Team.
3. Identify opportunities and linkages of our current ongoing work with RTWS.
  - a. Commission related research (e.g., on sanitation norms for the urban poor, and for rural India, results of demand-driven water supply schemes). WaterAid and other water and sanitation agencies can support this work out of their annual plans when they include RTWS as a priority for their organisation.
  - b. Examine in which organisations and partners ongoing work can feed into campaign. Develop the RTWS proposal (that we have for this workshop), into an action plan. With organisational shared commitment, potential partnerships and work plans.
  - c. RTWS interacts with caste, gender, livelihoods and exclusions. Individually and together as a coalition, we commit to working on these. These could be a common thread in the RTWS campaign
4. Prepare a proposal on behalf of the campaign to be submitted to the Global Sanitation Fund and any other organisation.

### Responsibility for next steps

- Mr. Depinder Kapur, Ms. Indira Khurana and Ms. Meera Pillai develop a joint statement understanding of the four organisations on our commitment to Right to Water and Sanitation context and challenges as an outcome from this meet. Seek organisational endorsement and commitment from the FORUM, WaterAid, India WASH Forum and FANSA on this understanding.
- WaterAid would prepare a position paper on the rationale for regarding the RTWS as a separate right within four months.
- FORUM would prepare a position paper on the rationale for regarding RTWS as part of the larger discourse/campaign on the Right to Water Security, within four months.
- FORUM would take the responsibility for convening the next meeting of the group in Pune (around November).

Dr. Ashok Ghosh, of the Department of Environment and Water Management, A. N. College, Pune, offered to put together a note on possible actions and strategies for the campaign.



# Annexures



# Agenda

Organised by:

Freshwater Action Network –South Asia (FANSA),  
Bread for the World,  
FORUM,  
WaterAid India (WAI)  
India WASH Forum (IWF)

## Objectives

- Understanding and learning from practical experience of Rights Approach to asocial entitlements: Food, Education, Health and Work
- Feasibility of Right to Water and Sanitation as a constitutional enforceable right in India.
- Developing mechanisms of collective and coordinated action among CSOs at national and sub national levels on Right to Water and Sanitation and action plans for taking this forward in 2009.

## Programme Schedule

Time	Agenda	Speaker	Session Outcome
<b>Session 1: Inaugural Session</b>			
Session Chair:			
Rapporteur:			
9:30-9:45	Welcome and self introductions		Better understanding of each other
9:45-10:05	Key note address	Mr. Shantanu Consul, Secretary Department of Drinking Water Supply, Gol	Buy in and support for the cause
10:05-10:45	Presentations on experience of social entitlements experience in Rights Framework of Indian context and constitution  20 minutes presentation each.	Mr. Vinod Raina – Right to Education Bill  Mr. Abhijit Das – Right to Health Bill	Understanding the experiences of Rights based struggles / work in other areas (Right to Education, Health).  Constitutional validity and provisions. Identification of policy makers, parliamentarians and forums that need to be reached.
10:45-11:15	Discussions and Q&A on the presentations		
11:15-11:45	Tea		
<b>Session 2: Where does India stand on Right to Water and Sanitation as human rights and constitutionally enforceable entitlements</b>			
Session Chair:			
Rapporteur:			
11:45-13:00	Presentation by organizations - (15 minutes presentation each)	FORUM WaterAid Bread for the Word	Understanding of RTWS in Indian context, the key issues for advocacy and action
13:00-14:00	Lunch		

Time	Agenda	Speaker	Session Outcome
14:00-14:30	Session 2 continued Presentation by organizations - (15 minutes presentation each)	FANSA NCAS	Understanding of RTWS in Indian context, the key issues for advocacy and action Group has developed clear understanding of the context, issues of RTWS
14:30-15:15	Open House and discussion		
15:15-15:45	Tea		
<b>Session 3: Generating ideas for advocacy action plan</b>			
Session Chair:			
Rapporteur:			
15:45-16:30	Group work, suggested themes - i) Influencing TSC and Swajaldhara and any other urban and rural water and sanitation schemes and programmes for making them more Rights focused. ii) Engagement with civil society networks on RTWS in different states iii) Media engagement and advocacy iv) Monitoring, Accountability and efficiency of delivery of ongoing WATSAN programmes v) Sector wide coordination with donor agencies, governments (national and sub national), Bilateral agencies vi) Any other(s)		Organisations that can lead on each theme or work together are identified.  Action plan for each theme decided and commitments secured from partnering organizations and any others at the workshop.
16:30-17:15	Presentation on the plan by the groups		
17:15-17:30	Concluding Remarks		

# Right to Water and Sanitation: Proposal for Collaboration

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## Collaborating Organisations

Forum, FANSA, IWF, IELRC, WaterAid India

## Context

Denial of access to adequate, regular and affordable drinking water and sanitation, is recognised as a great risk for health and livelihood outcomes as well as dignity and respect for women and marginalised communities of India.

Efforts made to achieve sustainable improvements in sanitation and drinking water have been diverse ranging from financial incentives to social mobilisation. By governments (state and national) and by civil society and others.

Focus has so far been on improving access to infrastructure and behaviour change. To ensure community ownership and upscaling. For drinking water, the challenge of attitude change was moving from open wells to covered wells or handpumps. This has still not been fully overcome with resistance on taste of water, preferences, availability of safe water sources and access constrained by caste barriers. For sanitation, the challenge is similar to the extent that it requires individual toilets, lack of availability of water to flush toilets and also overcoming resistance to the age old practise of defecating in the open.

The barriers to behaviour change is a subject that has been more talked about than studied. It is a taboo issue as well, with caste and religious barriers to handling your own shit or having a toilet close to your house. Some of these barriers are now breaking down purely for reasons of convenience and modernisation ideals, much less to a change in favour of secular and democratic values or as recognition of health benefits of sanitation improvement.

Various agencies are tied with their own positions and programme approaches, to the extent of looking at the issue from a narrow programming perspective. The government actions on safe water and sanitation have been infrastructure focussed. With incentives guided by political patronage and vote banks. It does not mean that there is no case for giving one time subsidy for construction of toilets and basic handpumps. Unfortunately the discourse in water and

sanitation sector has become narrowly focussed on subsidy versus no subsidy.

## Contextualising Rights perspective from a programming lens

It is common knowledge that a human being cannot survive without drinking water and contaminated drinking water kills through diarrhoea and other water borne diseases. This is easy to understand and is a behaviour and attitude change incentive for safe drinking water sources as well as recent attempts at water purification at the home level.

Compared to the obvious health risk of contaminated drinking water, the health risk of open defecation is not so obvious to the local communities in rural areas. In urban areas the issue of dignity and lack of open space for defecation, is a key driver for behaviour change for having access to toilets. In rural areas, it is the additional task of construction of toilet and keeping the toilets clean, that acts as one of the critical barriers to behaviour change. In caste and gender divided social and cultural setting of India, decision making on toilet construction at the household level is hindered by men who take decision on constructing toilets. The cost factor of constructing toilets, wage labourers who work from morning to evening in fields and sometimes for a couple of months migrating outside the village – have no incentive to construct and use toilets.

Hence the challenges of safe and sustainable sanitation behaviour change in rural areas remains a challenge that is beyond the provision and construction of toilets alone. However in urban areas, the major challenge remains provision of sanitation infrastructure for slum dwellers.

At present, the Right to Water is at a more advanced stage than the Right to Sanitation, both regarding State recognition and implementation on the ground.

Looking at the Right to Water and Sanitation as part of the larger water and livelihoods discourse is also needed. It has been observed that infringement of livelihoods impacts on

the Right to Water and Sanitation (whenever there is eviction of forest or slum dwellers, by mining and SEZs and by industrial pollution of surface and ground water).

### Workshop Purpose

The context for this meeting for a making a case for Sanitation and Water as a Human Right that is legally and constitutionally enforceable. A commitment to sanitation as a human right was made in the recently held 3rd South Asian Conference on Sanitation (SACOSAN III) in November 2008, which adopted the Delhi Declaration.

The challenge is about ensuring access to safe water and to sanitation facilities. With a commitment from the State in ensuring that all barriers (financial and material) to individual and community initiatives will be removed in exercising of this Right. The implications of this are more obvious for urban slums than rural settlements.

Access to safe water is recognised by many interventions of the Courts in India, as supporting the constitutionally guaranteed Right to Life (Art 25). However this has been stated as a principle, committees constituted by the honourable courts, but no concrete directions have been issued till date to the central or state governments on operationalising the Right to Water, even in villages contaminated with Arsenic and other pollutants.

Standards have been developed for defining access to safe water and these can be improved further and used in defining as measurable indicators of Right to water. Unfortunately for sanitation the norms are not so well developed and certainly not in the urban areas. Under CLTS, access to any level of safe disposal of human faeces is considered a reasonable and sustainable approach to behaviour change for sanitation improvement.

The workshop will look at the following questions:

1. Making a case for Right to Water and Sanitation as a constitutional right.
  - a. Lessons from other countries.
  - b. Lessons from other experiences in India (Right to work and Right to Education)
2. What are we advocating for rural and urban areas and what is the state being asked to commit itself to be accountable to the constitution and to the people?
3. What improvements we are seeking in the existing Programme and Policy environment for TSC and Swajaldhara?

- a. As a first step towards a commitment to Right to Water and Sanitation.
- b. Any programmatic improvements that may not be Rights focussed but will improve programme delivery.

4. What will Right to Water and Sanitation translate into commitments to action from the state and other stakeholders are we looking at for
  - a. Monitoring
  - b. Funding
  - c. Service provision for maintenance
5. What implications if any a Rights entitlement will have on accountability of the state and what implications for the private sector and civil society organisations?
  - a. What concrete commitment to transparency and accountability (systems and processes), we are seeking from the state, private sector and CSOs
  - b. What joint actions and commitments to change are we demanding to rectify failures?
  - c. What funding commitments and programmatic changes to existing TSC and Swajaldhara, will be needed ?
  - d. What new programmes for urban sanitation and water will be needed to implement this Right?

Taking all the above aspects, what constitutional change are we seeking and what process needs to be followed?

The one day workshop will not provide all the answers but allow us to identify common shared priorities and put in place follow up actions and teams to work on the issues and actions identified in this workshop.

### Participation in the workshop

The workshop will benefit from participation of a select small group (50) of practitioners and experts who know the subject well, those who have knowledge of constitutional and legal aspects of Rights work and recent interventions (eg. Right to Work Act and Right to Education Bill), and can contribute towards making a case for Right to Water and Sanitation.

Budget : Approx. Rs.10 lakhs towards logistics of hosting. So far we have secured Rs.6.7 lakhs only (Rs. 4.7 lakhs from IWF and Rs. 2 lakh from WaterAid India) and request for funding support has been made to Arghyam and FANSA.

**Venue:** Delhi. Mr. Jaitly and WaterAid India are being requested to get a hall booked at IHC.

**Date:** 4th Aug 2009

Next steps for the Aug workshop:

1. A core group formed of representatives of the organisations to develop the agenda, participant list and funding arrangements
2. Logistics of the venue and invitations
3. Inviting the Secretary Dept of Drinking water Supply: already done by IWF
4. Any others

Joint planning priorities beyond the Aug workshop;

The discussions so far have been over mail and a few meetings of some of the collaborating organisations – on the proposal. What has emerged from this is shared below:

1. Developing this proposal as a ToR and Working agreement between the collaborating organisations.
2. Pooling in ideas and resources for working in the coming 6 months. So far the proposals made are for;

- a. Constituting a core group of experts to make recommendations for actions on the subject
- b. Having state level workshops with NGO partners and activists in select states
- c. NGO partners capacity building and training on Rights perspectives
- d. Commissioning studies to document and learn from experience in different states
- e. Media and communications to assist in highlighting the issues
- f. Workshops in different countries in Asia Region
- g. Clubbing the RTWS workshop with the Global Sanitation Fund launch workshop (5th Aug) for India, to save on cost and time of participation.

3. Deciding on the follow up meeting(s) after the Aug workshop.

The above actions need to be reviewed and worked on by the core group of collaborating organisations, in the coming month and later on – so that the start up workshop as well as the next important timelines and commitments are met.

# Presentations

## From Right to Health To National Health Bill

### Articulating the Right to Health

- WHO Charter/ Constitution – April 7, 1948
- Universal Declaration of Human Rights – Article 12 – December 10, 1948
- International Covenant on Economic Social and Cultural Rights - 1967
- Health for All by 2000 -The International Conference on Primary Health Care (Alma Ata Conference) - 1978

### Universal Declaration of Human Rights

#### Article 25

- Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
- Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

( 1948)

### WHO Charter

- Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.
- The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition.
- The health of all peoples is fundamental to the attainment of peace and security and is dependent upon the fullest cooperation of individuals and States.

( preamble to WHO Constitution)

### Right to Health

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
  - (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
  - (b) The improvement of all aspects of environmental and industrial hygiene;
  - (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
  - (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness”

( Article 12 of ICESCR – 1967)

### Primary Health Care

Primary health care is essential health care based on practical, scientifically sound and socially acceptable methods and technology made universally accessible to individuals and families in the community through their full participation and at a cost that the community and country can afford to maintain at every stage of their development in the spirit of self-reliance and self-determination.

Principles – based on a socio-cultural-political understanding; provides prev-prom-cur-rehab services, includes health education and promotion, addresses determinants ( food, water, sanitation), intersectoral approach, addresses referrals

## From Rights to Reality

Comprehensive Primary Healthcare is converted to Selective Primary Health Care – Bellagio Conference 1979

Global Oil Crisis – Structural Adjustment Policies

World Bank Role –

- 1975 – 1st Health Sector Policy paper – focus on family planning and population control
- 1980's – Financing of the health sector – health sector reform begins ( 1987 study – Financing Health care in Developing Countries)
- 1993 – World Development Report – Investing in Health

## Later Developments

Articulation of

- Women's Rights ( CEDAW – 1979)
- Sexual and Reproductive Rights ( ICPD, Cairo 1994, FWCW Beijing 1995)

HIV and AIDS related development

- Rights of affected persons ( treatment and stigma/discrimination issues)
- Sex workers rights
- LGBT rights

General Comments No 14 on Right to Health (2000)– articulates the AAAQ approach

## Right to Health movement in India

People's Health Assembly – Review HFA 2000

- State assemblies
- National Assembly – Kolkata 2000
- People's Health Assembly – Dhaka 2000
- Peoples Health Charter

People's Health Movement ( Jan Swasthya Abhiyan)

- NHRC – JSA Public Hearings on Right to Health
- National Health Assembly 2 – Bhopal
- Political Engagement – UPA government
- NRHM Engagement– task Force membership Community Monitoring
- People's Rural Health watch

## Right to health movement in India

- Leadership is committed to the Primary Health Care – Alma Ata declaration
- There may not be adequate integration of the later developments eg.
  - Sexual ( and reproductive) rights
  - LGBT rights
  - PLWHA rights
  - Sex worker rights

(May be associated with the liberal critique of human rights – it focuses on individuals and ignores structural factors and is located within a neo-liberal state paradigm )

## Right to Health in India

- Right to Health read within Article 21 of the Indian Constitution pertaining to right to life
- The Supreme Court has passed certain orders pertaining to
  - treatment in cases of emergency
  - treatment in public hospitals
  - treatment of workers
- NHRC – JSA Public Hearings on Right to Health Care

## National Health Bill

- Emerged from the demand by JSA and incorporates the recommendations by NHRC
- Framed by the Ministry with support from National Health Systems Resource Centre
- Called a "Framework Bill"

## Broad Table of Contents

Preamble

### Chapter I: Preliminary

Short title, Extent and Commencement, Definitions

### Chapter II: Obligations of Government in relation to health

- General obligations towards progressive realization of health and well being
- Core obligations towards determinants of health
- Obligations to provide access to quality health care services
- Specific public health obligations:
  - Obligations of Central Government
  - Obligations of State Government
- Obligations to respect, protect and fulfil

## Broad Table of Contents ...

### Chapter III: Collective and Individual Rights in relation to Health

- Right to health
- Right to access, use and enjoy
- Right against discrimination
- Right to dignity
- Right of participation, information
- Right to justice
- Rights specifically related to health care (Users' Rights):
- Duties of users
- Rights of health care providers vis-a-vis users

### Chapter IV: Implementation & Monitoring Mechanism

- National Public Health Board: constitution and composition; functions
- State Public Health Board constitution and composition; functions

## Broad Table of Contents ...

- Decentralization and convergence in District, Block and Village level planning and implementation authorities
- Health Information Systems
- Government Monitoring
- Community based monitoring framework

### Chapter V

- Disputes Resolution through Public Dialogues and Public Hearings (Swasthya Jan Sunwais); issues, outcome and follow-up
- Grievance redressal through in-house Complaints Forums at the institutional level
- Cause of action for complaints related to health, before designated district courts
- Enforcement of monetary orders

## Broad Table of Contents ...

### Chapter VI: Residuary offences, penalties & immunities

- Criminal penalties
- Immunities

### Chapter VII: Miscellaneous

- Power to make Rules, Regulations, Bye-laws and issue Order
- Relationship with other health related laws, repeal and savings
- Reports & effective date

### Chapter VIII: Schedules

Schedule I: Illustrations of Government's obligations to respect, protect, fulfill health rights

Schedule II: List of issues/ areas for laying down Regulations

Schedule III: List of Enactments that must be subjected to compatibility review under Section 37

## RIGHT TO WATER AND SANITATION

Reflections from WaterAid India

## Rights

Water, sanitation and hygiene are the foundation of socioeconomic development, and so:

- The Constitution of India: Guarantees dignity, recognises right to life
- Supreme Court interprets right to life to include right to water
- State mandated to provide basic services such as drinking water and sanitation

Yet...

### **ITS HUMAN TRANSLATION MEANS....**

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- 20 million people without drinking water as per norms
- 1.5 million children die due to diarrhoea annually
- 70 million people are at risk of having fluorosis due to excessive fluoride groundwater consumption
- 10 million people have increased their risk to cancer due to arsenic-laced groundwater consumption

### **ITS HUMAN TRANSLATION MEANS...**

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- 73 million working days lost to water-borne disease
- Rs. 100 spent each year on health care by rural households treatment of water/ sanitation related diseases. This adds up to Rs. 6,700 crore annually

### **PERPETUATING PRACTICES**

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- More than 3 lakh manual scavengers continue to be chained to the inhuman practise
- Government deadlines have been missed thrice, as of March 31, 2009

### **VIOLATION OF RIGHTS**

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- Government unable to ensure the rights
- Communities not empowered enough to assert and ensure rights

### **Windows of opportunity**

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- The SACOSAN-III declaration recognizes drinking water and sanitation as right
- The PM recognises water and sanitation as rights
- The National Rural Drinking Water Programme recognises the right to water

### **RIGHT TO WATER AND SANITATION**

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Lessons from FANSA in Advocacy Action

## SANITATION CRISIS

- The magnitude of water and sanitation crisis need not be retold.
- No one disputes the need for universal accessibility to sanitation
- There is a consensus on the implication of poor sanitation on human productivity
- The story of governance failure in sanitation in our country is an extra ordinary problem
- Our economy has hit a high growth trajectory
- However, our public spaces are 'shrinking' and 'stinking'
- Poor access to water and sanitation is like driving a car at high speed with brakes on
- Extra ordinary problem needs extra ordinary response

## WHY RTWS IS IMPORTANT?

- What hinders poor access to sanitation?
- Technological breakthrough exists
- The need is to attain social breakthrough
- Recognizing RTWS is a vehicle to attain social breakthrough
- Polity must recognize that
  - Water and Sanitation as a legal entitlement of all citizens
  - Ensuring universal access to water and sanitation must find a space in governance

## BENEFITS OF RECOGNIZING RTWS

- Holds government to account
- Provides monitoring strength in the hands of people
- Can be used as an advocacy tool
- Helps to strengthen the social fabric
- Enables to focus on marginalised groups
- Ensures minimum requirements are met
- Enables broad based participation

## GOI COMMITMENT TO RTWS

- GoI has been a signatory to many international conventions on RTWS
- The 1981 Supreme Court ruling treats RTWS as an integral component of right to life
- Courts favoured treating groundwater as a social asset
- Delhi Declaration of SACOSAN III
- However, RTWS is not mentioned explicitly in statutes
- New guidelines on drinking water supply offers some hope

## FANSA and its commitment to RTWS

- FANSA represents a broad spectrum of CSOs
- Has been working in this arena of policy influence for the past two years
- Uses active advocacy as a tool to influence policy at the micro level
- Developed strategic plans on the RTWS in the region
- Long term strategies and short term action plans are being prepared for RTWS

## What FANSA has been doing?

- It has been working in this arena of policy influence for the past two years
- Uses active advocacy as a tool to influence policy at the micro level
- Developed strategic plans on the Right to Water and Sanitation in the region
- Long term strategies and action plans are being prepared for RTWS
- Using CSO platforms appealed in many forums to enact RTWS
- Uses Bangladesh as a regional example to advocate RTWS in India
- Net working for knowledge sharing and enabling cross learning in the region
- Promoting advocacy tools at the national and sub-national level
- Integrating policy promotion with conventional service delivery projects
- Exposing GP leaders to potentials and possibilities of right to water and sanitation
- Engaging local polity in dialogues and avoiding 'confrontation' by choice

### Water Regulation: AP experience

1996	AP Groundwater Act
1997	AP Farmers Management of irrigation Systems Act
1999	Vision 2020
2002	APWALTA (revised in 2004)
2002	Guidelines for watershed development
2003	AP water vision for water management

### APWALTA specific experience

- Failed to check the growth of new wells
- Role of GP is marginal
- Not an enabling law; rather disabling
- Empowered the government to control
- Specifies what not to do, not 'what to do'

### Lessons from FANSA

- CSOs need to be critical and constructive
- It is mutually beneficial to be critical and constructive
- The water and sanitation bureaucracy and technical agencies are too big to be ignored
- CSOs can not to recognize this reality
- Working in isolation is dysfunctional
- Local conditions differ dramatically and local residents compete amongst themselves for water and sanitation services

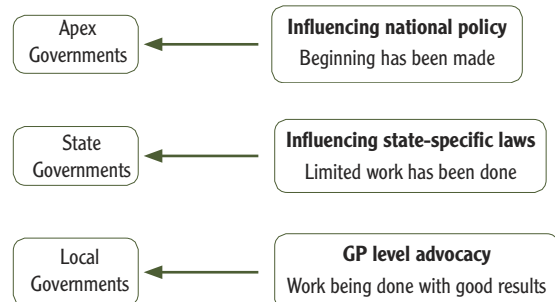
### GOI commitment to RTWS

- GOI has been a signatory to many international conventions on RTWS
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- Courts favoured treating groundwater as a social asset
- Delhi Declaration of SACOSAN III
- However, RTWS is not mentioned explicitly in statutes
- New guidelines on drinking water supply offers some hope
- Outsourcing and PPP are buzzwords, encouraged by state policies
- 'One size fits all' approach in outsourcing undermines collective action
- Without systems of RTWS in place, outsourcing is akin to private appropriation
- Community based solutions for guaranteeing RTWS for all sectors need to be advocated
- Long term engagement with the government through active advocacy is needed

### Some unanswered questions

- There is a shadow side to right to water and sanitation
- Translation of RTWS into specific laws and regulations is not automatic. How do we make this happen?
- Can RTWS be enforced by courts of law?
- Water and sanitation is a state subject, service delivery is by local governments. How do we address the issue in this multiplicity?
- How do we respond to gender equity?
- Rights need to be coupled with responsibilities. How do we ensure both are respected? (FANSA believes that it has a significant role in this)
- Is self regulation feasible?

### What has been the result of FANSA work?



## List of Participants

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# Total Sanitation Campaign (TSC)

Statewise Basic Information as on 4-11-2009

S. No	Name Of State	Total Household (2001)	Household without Toilet (2001)	Total HH in TSC (Inc. Census with tit.)	Total Ach. including Census 2001	%age Ach. against		Total Projected HH in 2009	%age Ach. against Projected HH in 2009	School Toilet			Toilet for Anganwadi		
						Census 2001	TSC+Census			App.	Ach.	%age	App.	Ach.	%age
		1	2	3	4	5= (4/1)*100	6= (4/3)*100	7	8 = (4/7) *100	9	10	11 = (10/9) *100	12	13	14 = (13/12) *100
3	Assam	4,220,173	1,706,369	5,894,841	3,066,287	73	52	4,720,231	65	34,772	16,592	48	16,819	3,297	20
4	Bihar	12,660,007	10,898,416	12,932,905	3,951,615	31	31	14,494,596	27	76,581	43,128	56	6,595	977	15
5	Chhattisgarh	3,359,078	3,185,084	3,539,420	1,504,160	45	43	3,805,078	40	48,549	44,319	91	10,167	7,594	75
6	Goa	140,755	72,892	113,186	101,616	72	90	172,854	59	731	446	61	547	58	11
7	Gujarat	5,885,961	4,611,438	5,386,100	4,790,741	81	89	6,671,551	72	22,425	24,320	100	22,505	22,670	100
8	Haryana	2,454,463	1,750,950	2,488,610	2,540,543	100	100	2,855,222	89	7,309	7,240	99	6,820	6,145	90
9	Himachal Pradesh	1,097,520	793,318	1,150,688	1,179,112	100	100	1,202,994	98	17,723	7,405	42	10,406	3,001	29
10	Jammu & Kashmir	1,161,357	675,923	1,786,158	763,550	66	43	1,306,794	58	23,108	10,852	47	940	64	7
11	Jharkhand	3,802,412	3,552,620	3,979,287	1,347,861	35	34	4,319,616	31	42,687	34,006	80	11,472	3,055	27
12	Karnataka	6,675,173	5,513,914	6,719,320	3,369,693	50	50	7,348,422	46	35,698	37,099	100	24,086	24,650	100
13	Kerala	4,942,550	922,529	5,093,763	5,122,798	100	100	5,287,400	97	3,600	3,285	91	4,957	3,200	65
14	Madhya Pradesh	8,124,795	7,398,577	8,652,440	5,235,286	64	61	9,410,396	56	85,568	88,499	100	14,320	19,675	100
15	Maharashtra	10,993,623	8,991,687	11,815,219	7,442,439	68	63	12,431,889	60	87,436	80,815	92	55,850	53,700	96
16	Manipur	296,354	66,692	492,916	247,763	84	50	309,157	80	3,919	1,345	34	1,201	157	13
17	Meghalaya	329,678	197,479	401,335	198,386	60	49	363,967	55	8,859	2,066	23	1,580	179	11
18	Mizoram	79,362	16,077	139,825	137,572	100	98	87,617	100	3,219	3,219	100	912	912	100
19	Nagaland	265,334	93,809	369,894	210,494	79	57	292,929	72	2,672	917	34	1,238	149	12
20	Orissa	6,782,879	6,259,607	7,579,920	2,806,312	41	37	7,376,368	38	70,663	58,984	83	25,160	17,248	69
21	Punjab	2,775,462	1,639,936	2,291,492	1,911,455	69	83	3,081,847	62	7,464	14,418	100	3,274	1,597	49
22	Rajasthan	7,156,703	6,111,318	8,029,718	3,381,193	47	42	8,314,651	41	68,134	49,706	73	21,198	8,622	41
23	Sikkim	91,723	37,285	141,452	149,038	100	100	101,415	100	1,604	1,606	100	340	416	100
24	Tamil Nadu	8,274,790	7,086,871	9,432,802	7,076,994	86	75	8,826,435	80	40,828	38,554	94	25,470	24,726	97
25	Tripura	539,680	119,096	979,647	1,020,501	100	100	595,820	100	4,939	4,768	97	6,024	4,838	80

S. No	Name Of State	Total Household (2001)	Household without Toilet (2001)	Total HH in TSC (Inc. Census with ttt.)	Total Ach. including Census 2001	%age Ach. against Census 2001	%age Ach. against TSC+Census	Total Projected HH in 2009	%age Ach. against Projected HH in 2009	School Toilet			Toilet for Anganwadi		
										App.	Ach.	%age	App.	Ach.	%age
26	Uttar Pradesh	20,590,074	16,631,504	24,452,726	14,833,385	72	61	24,005,081	62	241,424	224,006	93	96,967	71,419	74
27	Uttarakhand	1,196,157	818,161	1,264,297	766,331	64	61	1,360,539	56	3,925	2,977	76	1,601	776	48
28	West Bengal	11,161,870	8,156,016	12,139,370	10,391,048	93	86	12,228,661	85	134,981	76,600	57	50,630	18,413	36
29	A & N Ilands	49,653	28,635	49,653	21,018	42	42	64,828	32	0	0	0	0	0	0
30	Chandigarh	21,302	6,704	21,302	14,598	69	69	30,677	48	0	0	0	0	0	0
31	D & N Haveli	32,783	27,104	8,159	5,716	17	70	47,281	12	0	0	0	0	0	0
32	Daman & Diu	22,091	15,017	22,091	7,074	32	32	34,630	20	0	0	0	0	0	0
33	Delhi	169,528	62,920	169,528	106,608	63	63	213,426	50	0	0	0	0	0	0
34	Lakshadweep	5,351	367	5,351	4,984	93	93	6,617	75	0	0	0	0	0	0
35	Puduchery	72,199	56,732	33,467	17,658	24	53	93,885	19	26	0	0	16	16	100
Total		138,271,559	107,967,200	150,240,088	92,225,416	67	61	155,479,683	59	1,196,649	978,611	82	438,001	304,214	69

\* Projected number of rural households in each state have been calculated by applying rural:urban population ratio of 2001 census and average rural household size of 2001 census to the projected population as per Census of India. Ministry of Rural Development, NIC-Dept. of Drinking Water Supply

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## Rural Drinking Water Supply Coverage Status – State wise

Sl. No.	State Name	No. of Habitations	No. Of Habitations with 100% Population Coverage	No. of Habitations With Population Coverage > 0 and < 100%	No. of Habitations with 0 Population Coverage
1	Andhra Pradesh	72147	66615 (92.3%)	0 (0%)	5532 (7.6%)
2	Andman And Nicobar	0	0 (0%)	0 (0%)	0 (0%)
3	Arunachal Pradesh	5612	2064 (36.7%)	2108 (37.5%)	1440 (25.6%)
4	Assam	86976	37409 (43.0%)	21074 (24.2%)	28493 (32.7%)
5	Bihar	107642	56477 (52.4%)	51165 (47.5%)	0 (0%)
6	Chandigarh	18	0 (0%)	0 (0%)	18 (100%)
7	Chattisgarh	72329	25321 (35.0%)	45387 (62.7%)	1621 (2.2%)
8	Dadra & Nagar Haveli	70	0 (0%)	0 (0%)	70 (100%)
9	Daman & Diu(Only Daman)	21	0 (0%)	0 (0%)	21 (100%)
10	Delhi	0	0 (0%)	0 (0%)	0 (0%)
11	Goa	347	302 (87.0%)	45 (12.9%)	0 (0%)
12	Gujarat	34415	32662 (94.9%)	1753 (5.0%)	0 (0%)
13	Haryana	7385	6019 (81.5%)	1324 (17.9%)	42 (0.5%)
14	Himachal Pradesh	53205	33732 (63.4%)	7632 (14.3%)	11841 (22.2%)
15	Jammu And Kashmir	12331	3838 (31.1%)	3674 (29.7%)	4808 (38.9%)
16	Jharkhand	120473	118446 (98.3%)	579 (0.4%)	1448 (1.2%)
17	Karnataka	59203	24805(41.8%)	33947 (57.3%)	451 (0.7%)
18	Kerala	11883	11883 (100%)	0 (0%)	0 (0%)
19	Lakshadweep	9	0 (0%)	0 (0%)	9 (100%)
20	Madhya Pradesh	127197	49358 (38.8%)	76478 (60.1%)	1361 (1.0%)
21	Maharashtra	97206	77453 (79.6%)	0 (0%)	19753 (20.3%)
22	Manipur	2870	1034 (36.0%)	1315 (45.8%)	521 (18.1%)
23	Meghalaya	9326	5157 (55.2%)	3388 (36.3%)	781 (8.3%)
24	Mizoram	777	348 (44.7%)	398 (51.2%)	31 (3.9%)
25	Nagaland	1386	912 (65.8%)	0 (0%)	474 (34.1%)
26	Orissa	141928	63386 (44.6%)	74714 (52.6%)	3828 (2.6%)
27	Puducherry	248	208 (83.8%)	40 (16.1%)	0 (0%)
28	Punjab	14221	9914 (69.7%)	2071 (14.5%)	2230 (15.6%)
29	Rajasthan	121133	65053 (53.7%)	17444 (14.4%)	38636 (31.8%)
30	Sikkim	2498	1608 (64.3%)	881 (35.2%)	9 (0.3%)
31	Tamil Nadu	92689	82441 (88.9%)	10247 (11.05%)	1 (0.001%)
32	Tripura	8132	2718 (33.4%)	2855 (35.1%)	2559 (31.4%)
33	Uttar Pradesh	260110	260110 (100%)	0 (0%)	0 (0%)
34	Uttarakhand	39142	25436 (64.9%)	8010 (20.4%)	5696 (14.5%)
35	West Bengal	95394	81086 (85.%)	11582 (12.1%)	2726 (2.8%)
	<b>Total:</b>	<b>1658323</b>	<b>1145795 (69.09%)</b>	<b>378111 (22.8%)</b>	<b>134400 (8.1%)</b>

Data Source: [http://indiawater.gov.in/IMISWeb/Reports/rws/rpt\\_CoverageHabitationStatus.aspx](http://indiawater.gov.in/IMISWeb/Reports/rws/rpt_CoverageHabitationStatus.aspx) (as on 23rd October, 2009)

