OUR RIGHT TO WATER

SECURING THE RIGHT TO WATER IN INDIA: PERSPECTIVES AND CHALLENGES

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About the Authors

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“The right to water and sanitation is a human right, equal to all other human rights, which implies that it is justiciable and enforceable.”
- UN Human Rights Council, September 30, 2010

“The ‘Service Provider’ role of the state has to be gradually reduced and shifted to regulation and control of services. The water related services should be transferred to community and or private sector with appropriate ‘Public-Private Partnership’ model under the general superintendence of the State or the stakeholders.”

“Our pleasant river had plenty of fish in it. We used to catch them and walk to Dhadgaon with a basket full of fish on our head to sell there. We also used to collect the gum from trees like Salai, Dhawda and sell that in Kavat market in Gujarat. We had a happy life on the bank of the river Narmada. We had good crops, fish, fertile lands, hills and forests around. We had rights over our houses and our hamlets. We used to grow good vegetables in our backyard. The place was heaven for us.”
- Dedlibai Wasave, an adivasi Oustee of Sardar Sarovar Project on Narmada River

“You people might not have seen the Narmada Valley. You do not know our ways of surviving, our lifestyle, etc. There is no need for electricity in our lifestyle. We are living a rich life. Yet the government is building a huge dam to generate electricity by making us landless. There is the river Yamuna in Delhi. Why don’t you build the dam on it to produce electricity and submerge Delhi? Are our rights very different than the rights of people in Delhi?”
- Bawa Mahariya, an adivasi Oustee of Sardar Sarovar Project on Narmada River

Pani Chhaiye, Coke-Pepsi Nahi (We Want Water, not Coke-Pepsi)
- Slogans of communities struggling against Coca-Cola plants in Mehdiganj and Plachimada

Introduction

Jal Hi Jeevan Hai (Water is Life!) is a very common phrase used by communities, government and other agencies in their advertisements for water conservation. Water systems are not only essential for life, but also a source of livelihood for innumerable nature-based communities that depend on forests, land, coasts, river basins and other natural resources. Unlike people in cities, they are directly dependent on rivers and other water sources for their livelihood. As such, movements added another line and say: Jal Hi Jeevan Hai, Jeevika Ka Aadhar Hai (Water is Life and a Source of Livelihood too).

Nature-based communities⁶ are comprised of millions of adivasis⁷, dalits⁸, farmers, landless workers, fishworkers, potters and men and women of the plains, hills and coastal areas who are struggling and resisting to defend their rights over natural resources – Jal, Jangal, Zameen aur Khaneej (land, water, forest and minerals) – across the country today. They often face the worst impacts of the modernisation and development processes in modern India. Out of nearly 100 million displaced people, nearly 60 per cent are adivasis and dalits, the majority of which have been displaced by the construction of dams, the so-called “modern temples of India.”⁹

India’s water system is in crisis and the situation will only worsen in the coming decades.¹⁰ India is facing a reduction in its clean water resources due to the intensive and unplanned exploitation of groundwater, industrial and mining activities,

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3 http://mowr.gov.in/index1.asp?linkid=201&langid=1
4 As quoted in Ojas S V, Madhuresh Kumar, Vijayan M J, Joe Athialy, Eds, October 2010, Plural Narratives from Narmada Valley. Delhi Solidarity Group: New Delhi
5 As quoted in Ojas S V, Madhuresh Kumar, Vijayan M J, Joe Athialy, Eds, October 2010, Plural Narratives from Narmada Valley. Delhi Solidarity Group: New Delhi
6 Nature-based communities are dependent on land, water, forest and other natural resources for their survival and livelihood.
7 Adivasi is an umbrella term for a heterogeneous set of ethnic and tribal groups claimed to be the aboriginal population of India.
8 Dalit is a designation for a group of people traditionally regarded as “untouchable.” Dalits are a mixed population, consisting of numerous castes from all over South Asia; they speak a variety of languages and practice a multitude of religions.
9 India’s first Prime Minister while inaugurating the Hirakund Dam called it Modern Temple of India.
the construction of large numbers of big dams, increased water contamination, and factors relating to climate change. At the same time, it is experiencing an unprecedented increase in the demand for water due to a growing and urbanising population, unfettered economic growth, and an explosion in water-intensive industries such as thermal power plants and extractive industries.\textsuperscript{11}

The approach to this problem, as implemented by successive Indian governments over the decades, includes the approval of mega-projects in water resource management and since 2002, a progressive National Water Policy. Recently, the government of India began work on an updated National Water Policy shaped by the developments in this sector and by knowledge provided by neo-liberal international agencies such as the World Bank\textsuperscript{12} that promote water privatization and establishing water as a commodity.

The quote at the beginning of this report from the 2012 draft National Water Policy shows the government of India’s approach towards the question of the right to water for everyone. There is a concern for water security, but the problem is only perceived as that of supply management. The concerns today are no longer limited to water security and access to water, but are also linked with energy justice and food security for all, as comprehensively defined in the right to life and dignity in the Indian Constitution. The approach is also misplaced since the vast majority of India’s population is dependent on natural resources. There is an unfortunate focus on urbanisation and urban-centric development, which neglects the largest chunk of population.

\begin{minipage}{0.6\textwidth}
\textbf{Population}
India’s population has increased by 181 million people in the last 10 years, bringing its current population to 1.2 billion people, or 17.5\% of world’s population.\textsuperscript{13} India is still a mainly agrarian society with roughly 72 per cent of the population living in rural areas, while 28 per cent of people live in urban centres.\textsuperscript{14} India is the second most populous country in the world after China, and while the rate of population increase is slowing, it is still expected to overtake China’s population by 2035.\textsuperscript{15}
\end{minipage}

\begin{minipage}{0.6\textwidth}
\textbf{Access to drinking water and water availability}
At a national level, the proportion of Indian population using improved drinking water sources in 2008 was 88 per cent.\textsuperscript{16} In rural areas that figure dropped to 84 per cent,\textsuperscript{17} and in urban centres it was 96 per cent.\textsuperscript{18} In 2010, the annual per capita availability of freshwater resources was 1,588 cubic meters.\textsuperscript{19} This is a reduction in availability from 6,042 cubic meters in 1947.\textsuperscript{20} Population increases, urbanisation and the current development model are expected to reduce the per capita availability below 1,000 cubic meters by the end of this century, a situation labelled as water scarcity.\textsuperscript{21}
\end{minipage}

This paper explores the possibilities for the implementation of the right to water in the Indian context, and is divided into four sections. Section one deals with the meaning of the right to water in Indian law; section two addresses the challenges posed by increased mining, large dams, energy projects, land grabs, water privatization, discrimination and climate change; section three looks at the policy framework and the government’s response; and section four notes some recommendations and action points for both civil society and government, which will make it possible to achieve the right to water.

\textsuperscript{11} http://www.indiaenvironmentportal.org.in/files/file/WQSTATUS_REPORT2010.pdf
\textsuperscript{12} http://www.manthan-india.org/spip.php?article29
\textsuperscript{13} http://unstats.un.org/unsd/demographic/products/vitstats/serAtab2.pdf
\textsuperscript{14} http://censusindia.gov.in/Census_Data_2001/India_at_glance/rural.aspx
\textsuperscript{15} http://www.guardian.co.uk/world/2004/jul/12/india.china?INTCMP=ILCNETTXT3487
\textsuperscript{17} http://mdgs.un.org/unsd/mdg/SeriesDetail.aspx?srid=667&crid=356
\textsuperscript{19} http://www.imdpune.gov.in/ncc_rept/RESEARCH%20REPORT%2012.pdf
\textsuperscript{20} http://cpcb.nic.in/WQSTATUS_REPORT2010.pdf
\textsuperscript{21} http://cpcb.nic.in/WQSTATUS_REPORT2010.pdf
The Right to Water in the Indian Context

The year 2010 was momentous in the global struggle for the realisation of the intrinsic right to water. The right to clean and safe drinking water has been recognised not once, but twice, at the international level at the UN. On July 28, 2010, the United Nations’ General Assembly adopted a draft resolution recognising access to clean water and sanitation as a human right. The resolution was adopted with 122 votes in favor, no votes against, and 41 abstentions. The resolution called on “States and international organizations to provide financial resources, build capacity and transfer technology, particularly to developing countries, in scaling up efforts to provide safe, clean, accessible and affordable drinking water and sanitation for all.” India voted in favor of this resolution.

Later in the year, the Human Rights Council of the United Nations went even further. In September 2010, the Human Rights Council clarified that the right to water and sanitation is part of existing international human law and as such, States can no longer deny their responsibilities to provide safe water and sanitation. Since India voted in favor of the General Assembly resolution and is a signatory of the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child, its responsibilities are clear under international law.

Do the national law and the Constitution of India bestow on its citizens the right to water? The right to clean and safe drinking water and sanitation is not explicitly detailed in either the Constitution, or laws of the Republic of India. The Constitution guarantees every citizen fundamental rights to equality, life and personal liberty. Article 15 (2) of the Constitution further states that no citizen shall be subjected to any restriction with regard to “the use of wells, tanks, bathing ghats.” In light of the “eminent domain” principle, the State is the owner of all natural resources, but it is not duty bound by law to provide drinking water to citizens. However, Union and State governments have enacted various laws and policies for regulating the use of ground water, river water, sea water and other waters from time to time. The supply of drinking water has been part of India’s five-year plans since independence.

Several court judgements in post-Independent India have affirmed that all natural resources – resources that are by nature meant for public use and enjoyment – are held by the State in public trust. For example, in M C Mehta v Kamal Nath (1997), the Supreme Court declared that “the State is the trustee of all natural resources;” as a trustee, the State has “a legal duty to protect the natural resources,” and “these resources meant for public use cannot be converted into private ownership.”

This right of the State has, at times, been challenged by citizens, especially when the State has interfered with the rights of the citizens to use rivers, reservoirs and groundwater. Various courts have upheld that the right to clean and safe water is an aspect of the right to life. For instance, in Narmada Bachao Andolan v Union of India (2000), the Supreme Court said that “water is the basic need for the survival of human beings and is part of the right to life and human rights as enshrined in Article 21 of the Constitution of India.”

In 1990, in Attakoya Thangal v. Union of India, the Kerala High Court recognized the fundamental importance of the right to water. In this case, the petitioners claimed that a scheme for pumping groundwater to supply potable water to the Laccadives (now known as the Lakshadweep Islands) in the Arabian Sea would upset the freshwater equilibrium, leading to salinity in the available water resources and causing more long-term harm than short-term benefits. The Kerala High Court, in its judgement, requested deeper investigation and monitoring. In the ruling the judge clearly recognised the right of people to clean water as a right to life enshrined in Article 21, observing that:

“...the administrative agency cannot be permitted to function in such a manner as to make inroads into the fundamental right under Article 21. The right to life is much more than a right to animal existence and its attributes are manifold, as life itself. A prioritization of human needs and a new value system has been recognized in these areas. The right to sweet water and the right to free air are attributes of the right to life, for these are the basic elements which sustain life itself.”

But court judgements do not constitute law or policy. At best, they provide directions for the formulation of laws and policies. To date there have been no laws or policies enacted in India asserting that water is a fundamental and inviolable right enjoyed by every citizen of the country. The “right to water” can therefore only be obtained in India on a case-by-case basis by going to court.

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24 http://www.unhabitat.org/pmss/listItemDetails.aspx?publicationID=3143
In the light of its obligations under international laws, various court judgements and recent UN resolutions, people’s movements and civil society will have to push the government to draft federal laws in line with the human right to water and sanitation. As of now, the proposed draft National Water Policy falls short.

In addition, as mentioned in the introduction of this report, the right to water has to take into consideration the livelihood aspect of water. The right to water and sanitation has different meanings in the urban and rural context. As detailed later in this report, the right to water is intrinsically linked with the right to livelihood, the right to land, forests, minerals, the right to decide how to use and manage these natural resources, and so forth. Any discussion about the right to water has to take in consideration the livelihood aspect of it too.

### Uses of water

According to UN statistics India was using 40.1 per cent of its total water resources in 2010. This increased from 26.3 per cent in 1990.\(^2^7\) Currently 80 per cent of that usage – 750 billion cubic meters (bcm) – goes to irrigation. While the remaining 20 per cent is shared between domestic, energy, industrial and other users. “Estimates indicate that by the year 2025, the total water demand of 1,050 bcm will be very close to the total utilizable water resources of 1,122 bcm in the country.”\(^2^8\)

### Current and projected water uses\(^2^9\)

<table>
<thead>
<tr>
<th>Sector</th>
<th>2010 Use in billion cubic meters</th>
<th>2025 Use in billion cubic meters</th>
</tr>
</thead>
<tbody>
<tr>
<td>Irrigation</td>
<td>688</td>
<td>910</td>
</tr>
<tr>
<td>Drinking Water</td>
<td>56</td>
<td>73</td>
</tr>
<tr>
<td>Industry</td>
<td>12</td>
<td>23</td>
</tr>
<tr>
<td>Energy</td>
<td>5</td>
<td>15</td>
</tr>
<tr>
<td>Other</td>
<td>813</td>
<td>1,093</td>
</tr>
</tbody>
</table>

### Pollution and wastewater

India’s current waste water management systems are inadequate. In 2008 the total percentage of the population with access to improved sanitation facilities was 31 per cent.,\(^3^0\) In rural areas 21 per cent,\(^3^1\) and in urban 54 per cent.\(^3^2\) According to the World Health Organization, half of India’s morbidity rate is related to water. The municipal wastewater system in India currently has the capacity to deal with 11,000 million litres per day. Current estimates show that 38,000 million liters per day of wastewater are generated in Indian urban centers with more than 50,000 people. This category holds 70 per cent of the urban population. Wastewater produced by urban centers is estimated to increase to more than 50,000 million liters per day by 2050, while rural wastewater generation will cross 50,000.\(^3^3\)

The industrial and energy sectors have contributed greatly to the pollution load in India. Poor environmental standards have resulted in industries such as thermal power stations, chemicals, metal and mineral mining companies, leather processing and sugar producers to introduce toxic and organic wastewater into ground and surface water. Industries and power companies are expected to increase their demand for water to 18 per cent of total requirements by 2025, with corresponding increases in pollution.

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\(^2^8\) [http://cpcb.nic.in/WQSTATUS_REPORT2010.pdf](http://cpcb.nic.in/WQSTATUS_REPORT2010.pdf)


\(^3^0\) [http://data.un.org/Data.aspx?q=India&datamart%5bMDG%5d&d=MDG&f=seriesRowID%3a670%3bcountryID%3a356](http://data.un.org/Data.aspx?q=India&datamart%5bMDG%5d&d=MDG&f=seriesRowID%3a670%3bcountryID%3a356)

\(^3^1\) [http://data.un.org/Data.aspx?q=India&datamart%5bMDG%5d&d=MDG&f=seriesRowID%3a670%3bcountryID%3a356](http://data.un.org/Data.aspx?q=India&datamart%5bMDG%5d&d=MDG&f=seriesRowID%3a670%3bcountryID%3a356)

\(^3^2\) [http://data.un.org/Data.aspx?q=India&datamart%5bMDG%5d&d=MDG&f=seriesRowID%3a670%3bcountryID%3a356](http://data.un.org/Data.aspx?q=India&datamart%5bMDG%5d&d=MDG&f=seriesRowID%3a670%3bcountryID%3a356)

\(^3^3\) [http://cpcb.nic.in/WQSTATUS_REPORT2010.pdf](http://cpcb.nic.in/WQSTATUS_REPORT2010.pdf)
One of the key issues that threatens the achievement of the right to water in India in coming decades is the emphasis on high economic growth. This leads to unplanned infrastructure development, an urban-centric growth model at the cost of rural India, and wanton appropriation of natural resources by public and private corporations through various privatisation and reform measures. The current development paradigm in the country is centered on an eight to 10 per cent growth rate. The Integrated Energy Policy of India, released by the Planning Commission of India, states that: “India cannot deliver sustained 8% growth over the next 25 years without energy and water, and these two together shall, in turn, pose the biggest constraints to India’s growth.” Based on this assumption the policy recommends that by 2031, power generation capacity must increase to nearly 800,000 MW from the current capacity of around 160,000 MW inclusive of all captive plants. The policy projected an increase of 113,000 MW on April 2011 to 340,000 MW thermal capacity, and by another 150,000 MW by 2031. In addition, it projected an increase of 4,560 MW in June 2010 to 63,000 MW from nuclear energy production.

Such a huge increase in India’s energy generation capacity will mean large-scale utilisation of land, water, forest, coal and other resources. A study by Prayas Energy Group suggests that after the deregulation of the Electricity Sector in 2003 and entry of the private corporations, there has been a completely unplanned growth and increase to the country’s energy generation capacity. The study shows that the Ministry of Environment and Forest has accorded environmental clearances to a large number of coal and gas-based power plants with combined capacity totals of 192,913 MW. Another 508,907 MW in energy generation capacity are at various stages in the environmental approval process, that is, they are either awaiting environmental clearance, have Terms of Reference (TOR) granted, or are awaiting TOR. It is extremely rare for a thermal power plant (TPP) to be denied environmental clearance. This means that there are coal and gas plants that will produce around 701,820 MW of power set to be built in the coming years. Coal-based plants account for an overwhelming 84 per cent of in-pipeline projects.

These additions are more than six times the currently installed thermal capacity of 113,000 MW. They are also three times the capacity addition that would be required to meet the needs of the high renewable and high efficiency scenario for the year 2032, as projected by the Planning Commission’s Integrated Energy Policy report.

Strikingly, many of the projects in pipeline will be geographically concentrated in a few areas. Only 30 districts (or 4.7 per cent of the total 626 districts in India) will have more than half of the proposed plants with their capacity adding up to about 380,000 MW. Several of these districts adjoin, so the real concentration of power plants is even higher than the district-wide figures suggest.

While the State and central sectors have a large share in existing TPPs (at 82 per cent), private sector participation is set to increase significantly, with the private sector accounting for 73 per cent of all in-pipeline projects. Also, only 10 private corporate groups are planning to build generation capacity for about 160,000 MW.

Similarly, the Integrated Energy Policy projections of 150,000 MW are based on the assumptions:

- that hydro electric power is renewable and green power.
- that it will provide the much-needed peak hour demand support.
- that it will provide the much needed water storage facility.

According to the 2009 Central Water Commission Register of dams, India has 4,710 completed large dams (which are more than 15 meters tall). An additional 390 were under construction as of January 2009. The IEP policy refers to increasing the storage area and using that for peak power generation purposes. Most of the dams constructed in the country are multi-purpose projects with emphasis on irrigation, power generation and flood control. However, there are more and more cases of the diversion of water from these purposes to the industrial and energy sector. It is no coincidence that while the project affected families of the Bargi dam on Narmada in Jabalpur, Madhya Pradesh are not allowed to fish in the reservoir, but the water is now being supplied to upcoming thermal power plants and will be made available to the Chutkha Nuclear power plant. The Case of Sardar Sarovar dam is well documented where the water was supposed to reach the dry areas of Kutch, Gujarat. Instead, it has now been used by Vadodara city, for sugar cane farming, and diverted for the industries all along the canals in South Gujarat.

Construction of large numbers of thermal power plants and dams to meet the projected electricity targets will have

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35 http://www.cwc.nic.in/main/downloads/National%20Register%20of%20Large%20Dams%202009.pdf
multiple impacts on the environment and livelihood and cause massive social unrest and conflict in India.

Conventional power plants use massive quantities of water. Those built on the coast draw water from the sea, but damage the traditional fish workers’ livelihoods and adversely impact marine ecology. However, those located inland, which is nearly 72 per cent of the total, depend on groundwater, dam reservoirs, rivers, and other freshwater sources for their water needs. Many coal power plants in different parts of the country are already facing water shortages. Indian coal power plants require about 80 cubic meters of fresh water per 1,000 KWH of energy production. At this rate 1 MW power plant requires about 630,720 cubic meters of water per year. To meet the proposed 325,000 MW supply by 2031, the water requirements will be very huge (about 2,050 billion cubic meters per year). Close to 50 per cent of the ongoing power plant constructions are located in four river basins, namely, Ganga (33,255 MW), Godavari (16,235 MW), Mahanadi (14,595 MW) and Brahmani (6,534 MW).

Some of these basins, like the Mahanadi basin, are considered water surplus by planning authorities. However, if the needs of agriculture, local communities, small farmers, riverine settlements, fisher people, and the environment are considered, most river basins in India – including the Mahanadi – would be stretched to meet these multiple demands. In such a situation, water withdrawals by thermal plants, especially a large number of plants in a basin or sub-basin, have the potential to lead to intense conflicts. In November 2007 more than 30,000 farmers gathered at the Hirakund reservoir (on the Mahanadi river), forming a human chain in protest against the allocation of water to industries when they were not getting water for irrigation. Now a large number of thermal power plants are being proposed in this very basin.

Similarly, a proposal to build 47 new thermal power plants in the Vidarbha region of Maharashtra has been met with stiff resistance from many people as it will use a up large portion of water in nearby rivers, which have almost dried up due to poor monsoon and adverse weather conditions. The proposed generation plants will adversely impact the farming community due to their huge water withdrawals from existing water bodies. The Chandrapur Super Thermal Power Station (CSTPS), which has a total installed capacity of 2,340 MW including 210x4 and 500x3 units, has been facing severe water crisis and six of its power generating units – three units of 210 MW and three units of 500 MW – have been closed down due to low rainfall last year and the non-availability of water from the Irai river.

Maharashtra has logged 44,276 farm suicides since 1997, more than one-fifth of the total 216,500 suicides in India, due to a lack of irrigation and the poor financial plight of farmers, most of whom come from this region. Maharashtra remained the worst State for farm suicides for the 10th successive year, reporting 2,872, in 2009 according to the data available from National Crime Records Bureau. A larger number of new thermal power plants in the region will further worsen the situation and increase the overall stress level.

Many parts of the country are already facing severe shortages of water for drinking and agricultural uses. With a rapidly growing population and a preference for additional large industries, the demand for water will be unmanageable in the years to come. When this is coupled with a huge addition to coal power capacity, it can easily become a national crisis. A credible scenario would be the diversion of freshwater sources to industrial purposes, including coal power plants, putting human welfare at great risk. With groundwater removal already reported as being at unsustainable levels, and many rivers having dried up for various reasons, providing a supply of freshwater to a large number of additional coal power and nuclear power plants will pose serious socio-environmental problems and adversely impact the right to water of citizens. These plants will accordingly fuel the demand for coal and iron ore mining, and have further environmental impacts. It is extremely unfortunate that both the draft National Water Policy and the Integrated Energy Policy fail to mention this aspect, as well as the intrinsic links between the water and energy.

Dams are also problematic. Some of the major economic issues associated with dam-based hydro electric projects, which the IEP has neglected to factor in while recommending 150,000 MW capacity by 2031 as pointed out by power analyst Shankar Sharma in his shadow IEP are:

\[ \text{Submergence of lands, agricultural fields, forests, grazing lands and homes on a large-scale can lead to the} \]

38 For example, the National Water Development Agency, which is developing the Interlinking of Rivers Project involving 30 links for transferring water from “surplus” basins to “deficit” ones, considers the Mahanadi as a surplus basin. See http://nwda.gov.in/index2.asp?slid=3&sublinkid=3&langid=1
41 http://www.thehindu.com/opinion/columns/sainath/article995824.ece
displacement of a large number of people. This in turn can threaten the very livelihoods for the Project Affected Families (PAFs).

Disruption to downstream water flows will have impact on agriculture and fisheries, threatening the livelihoods of people who have no other employment skills to depend on.

Construction of dams are preceded by the clear-cutting of trees, excavation, fragmentation of the forests, dumping of debris and construction materials, noise and air pollution due to construction activities, and more. These would lead to the degradation of natural surroundings, and to degraded water sources.

The impounding of water in the dams has caused access roads to be cut off, isolating villages and communities. This has an adverse effect on local economies.

The cumulative impact of a number of dams in one region, or as a cascade of dams on one river, is much higher when compared to the impact of a single dam.

Another area of concern for building dams in the Himalayas is the environmental threats caused by global warming. With the accelerated glacial melting, the dams are likely to see huge increases in inflows initially and then highly reduced inflows in subsequent decades. This effect is likely to threaten the safety and the economy of the dams.

A major casualty of dam-based power policy is the huge loss of biodiversity in the form of forest wealth, the loss of river based aquatic life, the loss of agricultural and horticultural crops, and the loss of medicinal/herbal plants.

Shankar Sharma further adds that another major issue with dams is that the quantity, quality and pattern of water flow in the rivers are heavily impacted, and as a result, the species dependent on river flows are severely affected. At the global level the value of ecological functions, as well as resources of the environment (both terrestrial and aquatic), are estimated to be worth about $33 trillion per year, which is almost twice the global domestic product. Freshwater ecosystems are considered to be ecologically more valuable than the terrestrial ones. Even if we consider that this value is equal to the GDP of our country, the losses to the society by building so many hydropower plants will be immense. In this context, the IEP has completely ignored the economic implications of losing this biodiversity.

He further adds that the report “Methane Emissions From Large Dams as Renewable Energy Sources” points out that large dams in India are responsible for about 20 per cent of the country’s total global warming impact, releasing methane, CO₂ and nitrous oxide. This report, by Brazil’s National Institute for Space Research (INPE), also estimates that Indian dams are the largest global warming contributors compared to all other nations. This evidence should help shatter the myth that power from large hydropower projects is clean.

It is in this light that we need to see the anti-dam protests going on in the Narmada Valley, the Brahmaputra Valley in North East, in Andhra Pradesh against Polavaram dam, and against various dams on Ganges in Uttarakhand and all across the country. These protests are not only against the displacement of people, but also for preserving India’s larger cultural identity. Bava Mahariya and Dedli Wasave, oustees of Sardar Sarovar Dam who have been fighting under the banner of Narmada Bachao Andolan across the Narmada Valley for more than 26 years now expressed this clearly in the opening paragraphs of this report.

It is extremely crucial that comprehensive planning takes into account the overall ecological and material conditions to plan for the development, growth and livelihood rights of the people.

Temporal and spatial distribution of water

The temporal distribution of water in India is extremely uneven. At a national level about 80 per cent of rainwater falls in monsoon months between June and September. Rainfall distribution within these four months is also extremely uneven with the majority falling in a few intense spells.. In peninsular areas the contribution of the monsoons to the annual river flow is 90 per cent. This is why retention and storage

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43 www.narmada.org
45 http://www.thehindu.com/news/cities/Vijayawada/article2588115.ece
46 http://matuganga.blogspot.in/
of water is so important in India. Spatial distribution is also very unequal. For example, Brahmaputra (7.3 per cent of the geographic area) and Barak basin (4.2 per cent of the geographic area) receive 31 per cent of the total annual water resources. Big dams and reservoirs, which will result in the loss of livelihood of millions, are not the solution. The fixation on technology and technocratic solutions has resulted in the proposal for the river inter-linking project. The river inter-linking project was the brainchild of the NDA government and in October 2002, then-Prime Minister Atal Bihari Vajpayee formed a task force to get the project going against the backdrop of the acute drought that year. The task force submitted a report recommending the division of the project into two parts: the Peninsular component and the Himalayan component.

The Peninsular component, involving the rivers in southern India, proposed developing a “Southern Water Grid” with 16 linkages. This component included diversion of the surplus waters of the Mahanadi and Godavari basins to the Pennar, Krishna, Vaigai and Cauvery basins.

The task force also argued against the diversion of the west-flowing rivers of Kerala and Karnataka to the east, the interlinking of small rivers that flow along the west coast, south of Tapi and north of Mumbai and interlinking of the southern tributaries of the river Yamuna.

The Himalayan component proposed the construction of storage reservoirs on the Ganga and the Brahmaputra and their main tributaries both in India and Nepal in order to conserve the waters during the monsoon for irrigation and for the generation of hydropower. The reservoirs would also be used to protect against floods.

The project was shelved after many groups protested, but the idea remains and has been implemented in some states. For example, in Gujarat where the Tapi-Par and Narmada link is being established. The Supreme Court is monitoring the situation and seeking information about the government’s desire to move forward. Former President Abdul Kalam Azad, also known as “Missile Man” for his contribution to the India’s Nuclear Programme, remains a champion of the project.

**Destroying Traditional Water Systems**

The Indian subcontinent is characterised by diverse agro-ecological systems. India has been host to human populations for many millennia. The populations living in these diverse agro-ecological systems have always revered water. Hindus and many tribal peoples of India still worship their rivers as gods. Water has diverse socio-religious uses and plays a central role in many religious ceremonies and rites. On an aggregate level, India receives a high yearly rainfall; however, rainfall is unevenly distributed over space and time. Most parts of the country do not see more than 50 days rainfall per year. Most likely due to this abundance and scarcity of water, Indian cultures realised thousands of years ago that clean and safe drinking water was a finite and precious resource and developed systems to manage it. Indian kingdoms were writing about sophisticated and decentralised water management systems more than 2000 years ago and some ancient water managements systems, like the second century AD Grand Anicut weir in Tamil Nadu, still operate. These community-maintained, sustainable water extraction, storage and conveyance structures were adapted to local conditions, taking into account the lay of the land, available raw material, as well as the social structure and make-up of the area they serves.

A few examples of these diverse systems include the **Zings** of Ladakh; the **Kul** of Himachal Pradesh; the Bamboo Drip Irrigation of tribal farmers of the Khasi and Jaintia hills in Meghalaya; the **surangam** of Malabar region of Kerala; and the **Ahar-Pyne** system for harvesting floodwaters in the flood prone state of Bihar. Even in the region with the lowest

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47 [http://cpcb.nic.in/WQSTATUS_REPORT2010.pdf](http://cpcb.nic.in/WQSTATUS_REPORT2010.pdf)
53 [http://www.indiawaterportal.org/node/17747](http://www.indiawaterportal.org/node/17747)
54 [http://www.rainwaterharvesting.org/rural/traditional.htm](http://www.rainwaterharvesting.org/rural/traditional.htm)
rainfall in India, in the arid districts of Jaisalmer and Badmer in Rajasthan, there has been a long standing human population who, over time, developed a full arsenal of tools to provide water for drinking, domestic and agricultural use at home and in the community.55

Detractors of these traditional systems would say that they could not possibly meet the needs of an expanding population and economy; that those that promote them are holding onto the past. However, if 5-10 per cent of the land was used for rainwater collection there would be enough water to meet irrigation and household needs.56 The point is not to remain in the past, but to draw on past experience as well as the best current scientific knowledge to develop water management systems that respect the rights of India’s peoples, are adapted to local ecology, can equitably distribute the resource, and can be community controlled and sustainably managed. Serious efforts must be made to combine water harvesting traditions with the insights of modern science and technology.57

Is the National Water Policy Enough?

The Indian government was relatively late to begin working on a National Water Policy (NWP). The first NWP was published in 198758 in response to a severe drought. The main principles outlined in this policy were:

- Conjunctive use of water from surface and sub-surface sources.
- Supplemental irrigation.
- Water-conserving crop patterns.
- Water-conserving irrigation and production technologies.
- Raising canal water charges.
- Promoting user participation in canal management.

The NWP was altered and updated in 2002. Some of the major changes to the policy were:

- An explicit recognition that there was a role for the private sector to play.
- A change from concentration on new projects to maintenance of existing ones.59

The Union government recently made public a draft 2012 National Water Policy, which is due to be completed in March 2012, after the printing of this report. In the last year the government consulted with what Water Resources Minister Pawan Kumar Bansal claims were all stakeholders in the water sector. According to the India Water Review this included consultations with “academics, experts, professionals, corporate representatives and NGOs ... [and] Panchayati Raj Institutions.” This consultation did not survey the people’s movements or affected communities.60

According to Ramaswamy R Iyer, the basic issue addressed in the new water policy is the same that has been underlined in previous policies, namely that the major issue facing water management in India is that demand outstrips supply. This is due to regional and temporal imbalances in water distribution and an increasing demand due to increasing populations, urbanisation and development. The water crisis in India is portrayed as a crisis of availability and the answer to this crisis, according to the new policy, is to increase water availability through supply solutions. This means increasing storage, mainly through large dams, and redistributing water from areas of “surplus” to areas of deficit, mainly through inter-basin transfers and long distance transfers. According to Iyer the document also contains “new ideas now prevalent and scattered throughout the document that reflect "environmental concerns, demand management, sustainability, people’s participation, equity and water as public trust." However, water as economic good, market forces, privatisation and private sector participation, economic pricing on a full-cost-recovery basis and incentives for water treatment and reuse belie the true intentions behind the use of progressive words, exposing the pro-privatisation push.61

58 This is in contrast Israel, a country that has made ‘recorded impressive progress on all fronts. The first principle of Israel’s water law of 1959 is that water sources are the property of the public; there is no private ownership of water resources.’
60 http://www.indiawaterreview.in/Story/News/india-to-have-new-national-water-policy-by-march-2012/447/1
61 Comments sent to the Ministry of Water Resources by Ramaswamy Iyer former Secretary, Ministry of Water Resources, Union of India on February 5, 2012.
With regards to the Indian government’s current water policy and the direction in which this policy is heading, it is clear that there are a number of threats to the right to water and sanitation. They fall broadly into three areas. First, there is a poorly conceived understanding of the nature of the water crisis in India. Secondly, water is treated as a human need, and not as a human right, and finally, there is progressive privatization of water services, the proposed withdrawal of the state from its duties related to water, and the commodification of water in general.

**Demand side and issues**

As discussed above there is a long held position within the Indian government that the water crisis in India is a crisis of availability, and that the answer to this is to increase and redistribute water supply, mainly through mega projects such as dams and river inter-linking. In the current NWP inter-basin transfers are actively encouraged for redistributing water to deficit areas for “increasing production but also for meeting basic human need and achieving equity and social justice.” (section 5.5) This undue importance put on supply and large projects means that India had a blind spot to reducing pollution and demand, and has neglected small-scale conservation efforts such as water harvesting, and promoting less water intensive crops, industry and energy plants. While demand management and water recycling for agriculture are mentioned in sections 6.2 and 6.1.1 of the new policy, they are only partially conceived and receive too little emphasis. According to Iyer, “There is no recognition that the [water] crisis is at least partly of our own making.”

Much of the growth in water demand in India is the result of a particular model of economic development, which has brought rapid industrialization and accelerated consumerism, along with their demands on water and increased pollution. It is clear this model is not sustainable. Government, however, fails to address the rapid development and its resulting effects. Instead, the State is trying to bend the water system around the development model, and not the development model around the water system. Iyer says: “Ecology cannot be asked to accommodate development needs. Our visions of development must spring from an understanding of ecological limits.”

The priorities of the Indian government detailed above are major threats to water and sanitation rights not just now, but especially in the future as this uncontrolled increase in demand rapidly outstrips supply.

**Groundwater**

Groundwater, a vital part of the ecosystem and what Himanshu Thakkar, coordinator of South Asia Network on Dams, Rivers and People (SANDRP), calls “the country’s lifeline,” gets little mention in the NWP. Section 1.2 (iv) mentions only that it is over-exploited in several areas. According to a UN study this is a grave understatement. The green revolution in the Northern States, whose produce now supports hundreds of millions of people, have been mining water now since the 1970s as part of the green revolution agricultural model. “Several recent studies have identified the Indus River plains aquifer, which flows beneath the India-Pakistan border, as having experienced some of the world’s worst groundwater depletion. Significant declines in the water table are already being measured in places like Rajasthan, Punjab and Haryana and Delhi. It was issues like these that lead Thakkar to state that groundwater should have been “the entire focus” of the new water policy. Considering the number of people who depend on groundwater for agricultural and domestic use, and the stress caused by a large number of thermal power plants, the lack of attention paid to groundwater in government policy is developing into a major threat to the right to water.

**Water as a need, not a right**

Water is described as a “basic human need” in the 2012 NWP. Nowhere in the document is it referred to as a human right, which should be “turned into enforceable rights through new laws” as noted by Maude Barlow in her report on the UN resolution on the right to water and sanitation. “This is not a semantic distinction. One cannot trade or sell a human right, or deny it to someone on the basis of inability to pay,” she explains. Pawan Kumar Bansal, India’s Minister of Water Resources has described water as a natural resource, fundamental to life, livelihood, food security and sustainable development, noting that it is also a scarce resource. Despite India’s obligation under the UN and despite the water crisis as hundreds of millions of people go without proper access to sanitation and drinking water, India has opted to frame its most recent policy in terms of water as a need and, as we will explore in the next section of this
report, intends to privatise it. This missed opportunity is a major threat to the right to water in India today.

**Privatisation**

Section 7.2 of the NWP calls for water to be priced in such a way to “reflect the full recovery of the cost of administration, operation and maintenance of water resources projects taking into account the cross subsidy.” This is laying the groundwork for the entry of private operators and multinational corporations. The NWP calls for the State to begin gradual withdrawal from the role as service provider and shift it to “regulation and control of services.” The service provision would shift to “community and/or private sector with an appropriate “public-private partnership” (PPP) model.”69 This is what Iyer calls the “the thin end of the wedge towards privatization.” He adds that, “On the one hand, if basic water is a fundamental right, the State cannot abdicate its responsibility to ensure that it is not negated. On the other, water has to be managed at the local level with community participation. PPP is a dubious proposition.”69 Obligations under international law are to provide drinking water as a right regardless of the ability to pay. The NWP, however, states that the “Centre, the States and the local governance institutions must ensure access to a minimum quantity of potable water for essential health and hygiene to all its citizens, available within easy reach of the household” (section 3.1.)

There are still hundreds of millions of people in India who do not have proper access to clean drinking water. The NWP describes it more lightly noting that, “Access to safe drinking water still continues to be a problem in some areas.” The urban population has increased almost immensely in last 100 years, increasing from 26 million to 285 million. One of the conspicuous features of urbanization in India is the skewed distribution of population, with 28.3 per cent of the urban population in 35 metro cities alone. Unregulated growth of urban areas, particularly over the last two decades, without infrastructure services for proper collection, transportation, treatment and disposal of domestic wastes, led to increased pollution and health hazards. Municipalities and other civic authorities have not been able to cope with this massive task. This could be attributed to various factors, including the erosion of authority, the inability to raise revenues, and inadequate managerial capabilities. That is why it became necessary to launch the Ganga Action Plan and subsequently, the National River Action Plan. These plans address the trapping, diversion and treatment of municipal waste water. The situation warrants immediate redress through radically improved water resource and water quality management strategies.70

In both the draft NWP and documents produced by various government departments and the World Bank,71 there is an increased emphasis on the private sector participation in water services. Privatisation is not new to the water sector. The existence of personal borewells, supply of water by water tankers and other smaller practices of water supply in villages and cities have existed for a long time. These practices, however, were mostly community managed, or restricted to personal use. What has changed in the past 10 years is the entry of private corporations, which will account for nearly 28,577 MW of hydropower by December 2011. Big corporations such as Suez-Degroment, Veolia, Coca-Cola, Pepsi, Tata, Reliance and many others are in the business of water, sanitation, solid waste management, sewerage, bottled water, beverages and more in different forms of public-private partnership.72

The worst problems with privatisation centre on questions of equity and access, and the denial of water justice to millions of poor and working class neighborhoods in the cities that can’t pay higher water charges. Communities have successfully fought attempts to privatise water distribution and related activities in Delhi, Bangalore, Sangli-Miraz, but the fight is not over so efforts are continuing.

The World Bank, the Asian Development Bank and other international financial institutions and consulting organisations like PricewaterhouseCoopers have been pushing for water sector reforms. In 2005, a World Bank paper made recommendations for privatisation, arguing that, “if India is to have sustainable economic growth, the role of the Indian water state must change from that of builder and controller to creator of an enabling environment, and facilitator of the actions of water users large and small.” The paper called for, among other things, “stimulating competition in and for the market for irrigation and water and sanitation services.”73 The draft National Water Policy reflects these positions very clearly.

Tensions over water are rising in India and water conflicts in the cities will start soon. A simple google search for the

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69 Point 13.4 l of the Draft National Water Policy
70 http://cpcb.nic.in/WQSTATUS_REPORT2010.pdf
71 Water and Sanitation Programme, September 2011, ‘India’s Water Sector Sees Emerging Role for Private Sector Participation as a Means to Improve Services’
words “water riots” shows riots in cities of Lucknow, Jaipur, Delhi, Chennai, Indore, Mumbai, Vidarbha, Jamnagar and may more. In Delhi, about 30 per cent of the population gets less than 30 liters for each person per day, while 5 per cent gets about 200 liters. In Mumbai, 34 per cent of the population gets less than 75 liters, while 8 per cent gets more than 175 liters. This situation is unlikely to improve with demand set to outpace supply in the next decade. By 2020, India’s water demand is expected to be around 1,000 BCM, while the supply will be about 700 BCM. Privatisation and the passing of distribution rights to private companies will mean higher water prices, which will aggravate the situation.

The proposed NWP doesn’t offer any solutions. It seems unlikely that the right to water for 1.2 billion people will be protected – many will continue to live without access to clean water.

The Way Forward

In the sections above we have tried to show comprehensively the integrated nature of the right to water and the right to livelihood. Moving forward, the right to water must be aligned with India’s developmental needs since the current paradigm of growth will hugely impede water access for millions of people and divert scarce water resources to unplanned industrial and power development.

Challenge the NWP at the State level

The current water policy must be challenged at the State level. With the draft NWP set to be released in March 2012, it is too late for civil society to have any effect its content. However, each Indian state is expected to draft its own State Water Policy (SWP) within two years of the release of the NWP. Civil society across India needs to pressure State governments to draft SWPs that emphasise decentralised community-controlled water systems that respect the particular agro-ecological conditions of the area. The SWPs should also deny any form of water privatisation.

India needs a Water Rights Law

India, unlike countries such as the Democratic Republic of Congo, Ecuador, Kenya, Nicaragua, South Africa and Uganda, does not have a Right to Water Act. If the right to water was explicitly recognised in Indian law it would allow the civil society and Indian citizens to demand it politically, administratively and judicially. A Right to Water Act would mean that current government policy, which is now an impediment to people accessing this right could be challenged and future policy would have to be written with a view to respect this right. The right to water has been recognised as part of international law and States are required by the Covenant on Economic, Social and Cultural Rights to legislate for that right. Pressure must be brought on the Indian government at the national and international level to legislate for this right. In the past, civil society has had some success pressuring the government to enact laws that are beneficial to people. Examples of this include the Right to Information Act Campaign and the Forest Rights Act Campaign. This model should to be followed for a Right to Water Act Campaign.

A progressive people’s development policy

In conjunction with the above, civil society must educate the public on the importance of water policy and mobilise them for participatory policy change. The National Water Policy – and the beliefs and presumptions behind it – needs to be completely scrapped and a progressive NWP drawn up. Any new policy must start by addressing the growing demand for big engineering solutions to increasing water supplies and move towards managing demand increases and mainstreaming small-scale, community-managed supply solutions. Additionally, the issue of pollution and water treatment should be given top priority. As Iyer notes, the overarching perspective of any future policy must take the ecology and social justice perspective, with all other perspectives subordinate to these. The “stakeholder consultation” during the drafting of the 2012 NWP was a mockery of a participatory process. The drawing up of any new policy must be participatory and as inclusive as possible. There must be special emphasis on including marginalised groups in the process including dalit, adivisis, women, and the urban poor and so on. A participatory approach to drafting water policy has been followed by countries like Brazil, South Africa, Kenya, Ghana and Sri Lanka.

74 http://tinyurl.com/7snjjby
76 http://www.righttowater.info/progress-so-far/national-legislation-on-the-right-to-water/
77 http://www.righttowater.info/progress-so-far/country-cases-of-participatory-approaches-to-legislation-and-policy-review/
An energy policy compatible with the right to water

Apart from the changes in the water policy, more concrete and immediate action is required to put a moratorium on the approval of any more thermal power plants, big dams and mining in ecologically sensitive areas. In addition, hydro and energy projects that have already got clearance, but have high social and ecological costs and are opposed by communities, should also be put on hold. Until there is a thorough review of the all the planning and approval mechanisms, the government should say “no” to big infrastructure projects. There is a complete lack of holistic planning within the different ministries at the centre and State levels, which are granting permissions for big highways, dams, thermal power plants, mining, steel plants and other infrastructure projects.

Local democracy/swaraj

Simultaneously, the bottom-up planning at the Gram Sabha and Basti Sabha level has to start. Communities can decide for themselves the best use of the natural resources if provided enough support by the government. Unfortunately most of these decisions are taken at the higher level and then implemented with force and impunity at the ground level. It has been the general experience that at no point before the handing over the water services to private players, have the citizens been consulted. The micro-level planning to conserve water, restoration of the small dykes and traditional water structures, promotion of less water and chemical-intensive agriculture will improve village level economies. A mixed use of different energy sources and decentralised production of electricity will also mean a reduction in the number of thermal power plants needed. A combination of these measures will ensure, to a large extent, access to water, land and forests in rural areas. This requires a strong political will from the government. Even though the government has adequate knowledge to implement many of these measures, changes are blocked by the larger economic policy direction being pushed by the international financial institutions in close collaboration with the Indian multinational corporations that are seeking to exploit and increase their profits.

Bridging the gaps between food security and water justice

Across India today, government is facing opposition from farmers, workers, adivasis, dalits, men and women to its various planned infrastructure developments. This is very important, but there is a greater effort needed at policy intervention too. A national campaign for the right to water similar to the right to food campaign, the right to information campaign, and the forest rights campaign should be launched to force the necessary changes in the water policy and push for a legislated Right to Water Act. The campaign to achieve water justice and equity must look beyond the access to drinking water in rural and urban areas and take back the right over water from corporations that are selling our water to us in bottles and other products.

A plan of action

The right to clean water is a fundamental human right of everyone and can’t be held hostage to the profit motives of corporations. The government of India should prepare a plan of action in line with the commitments made at UN so that the right to water can become a reality like all other fundamental rights enshrined in Indian Constitution and the Universal Declaration of Human Rights.
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