Right to Drinking Water in India

Introduction

Despite constitutional mandates and official proclamations, India has lagged behind, among others, in the two most important concerns for the well being of people in any society: (income)poverty and access to clean drinking water and sanitation. Millions of Indians, especially women and children, are living (rather forced to live) in conditions of severe poverty devoid of any meaningful living conditions. About 226 million people lack access to safe water and about 70 per cent of population (about 640 million) lack basic sanitation facilities. About 46 per cent of India's people are living in absolute poverty (i.e. less than one US dollar a day) while 88 percent of pregnant women in the age group 15-49 suffer from anemia. About 62 million children under the age of five are malnourished and one-third of children below 16 are forced into child labour (Haq, 1997). The water-related diseases are claiming the lives of about 1.5 million children (500,000 children due to diarrhoea alone) under 5 years and person-days lost in India are estimated to be about 180-200 million a year (Krishnakumar, 2003; Parikh et al, 1999).

In developing countries, of the 37 diseases identified as major causes of death, 21 are related to water and sanitation. Water-borne diseases are causing more than 4 million infants and child deaths every year in developing countries. The issue of quantity and quality of water thus becomes a fundamental basis of life (APPEN, 1998: 13-14). In China, widespread access to safe drinking water and sanitation has minimized the adverse impacts on health despite high levels of pollution of water sources (World Bank, 1997). A paradoxical scenario in India is that millions of tones of food grains are rotting in the Food Corporation of India (FCI) godowns while millions of poor suffer for want of minimum calories because of lack of purchasing power. The current stock of food grains is equivalent of about

one tonne of food for each household below the poverty line.[1] This is 'hunger amidst plenty' and is 'a scandalous phenomenon of mounting food stocks against a background of widespread hunger' (Dreze and Sen, 2002: 336-37). In this regard, 'India has violated the right to food in its worst form' (Mahendra Dev, 2003: 27)[2].

The ideological choice of treating water as an economic good or a 'cashable resource' is based on the assertion that market is the principal mechanism to regulate the flow of goods. Even the advocates of this ideological choice cannot deny that nothing can replace water. Except air, there are no other sources of life comparable to water on the Earth. Thus, to have access to water 'is not a matter of choice. Everyone needs it'. The uniqueness of water to life makes it a 'social asset, a common good basic to any human community' (Petrella, 2001: 54-55). Water is fundamentally different from other resources for the reasons that: it is one of the four elements of the Ancients (along with air, earth and fire) essential to life; it plays an important role in hygiene and in combating epidemics;[3] it has an important social role; and fresh water, which comes mainly from the sky, is a 'gift' to humans and is usually regarded as a public good (Smets, 1999: 13). Without food humans can survive for several weeks but without water they will die in a few days (APPEN, 1998: 7). The 'deterioration and depletion of the world's

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[1] The current stock is estimated to be about 63 million tons. About 17 million tons are supposed to be sufficient as buffer stock for price stability and ensuring food security (Mander, 2003).

[2] A civil society organisation, People's Union for Civil Liberties (PUCL), approached the Supreme Court of India in May 2001 demanding that the food stocks in the country should be used to prevent hunger and starvation. The Supreme Court found fault with several State governments for their laxity in identifying and reporting on the number of families below poverty line and lift their quotas of food grains from the FCI. 'What we are seeing is a tragic comedy', remarked the judges (*The Hindu,* 18 September 2001, Hyderabad).

[3] There are many examples in the world to suggest that clean water improves health and reduces disease. To give only two instances: From the two main water bodies, Hussainsagar constructed in 1562 and Mir Alam Tank in 1806, there was plenty of water supply in the city of Hyderabad. The cholera disease, which used to affect people annually, was not known for several years (Imperial Gazetteer, 1909: 118). These two sources of water have become highly polluted overtime and are no longer used as sources of drinking water. The dreaded yellow fever disappeared during 1928-32 in Guayaquil city (Ecuador) when the entire population was covered by 24-hour water supply. However, it has resurfaced in 1938 when access to water became problematic along with water contamination (Swyngedouw, 1997).

water systems has taken place concurrent with the rise in the power of transnational corporations and a global financial system in which communities, indigenous peoples and farmers have been disenfranchised' (Gleick, 2002). International trade is occurring in bulk transfer of water across countries in several parts of the world. Several companies are developing technologies for transporting water in huge sealed bags across oceans for sale (Raina, 2002: 21).

A situation of millions of people without access to adequate water, increasing privatisation of water utilities in many countries, growing resistance to water privatisation around the world, growing awareness of the social and economic rights of citizens due to civil society actions, the Supreme Court's judgments and the declaration of right to water as an explicit right by the United Nations Economic and Social Commission in November 2002 has brought the issue of 'right to water' to the centre stage. A discussion on right to drinking water in India assumes relevance in this context.

This paper proceeds with approach that it is the constitutional obligation of the State to provide adequate quantity of drinking water to the citizens and also protect water resources as common goods. From human rights perspective, the State is duty bound to protect and enable the citizens to enjoy their rights. Any policy of the State that jeopardizes the ability of the citizens to realise their fundamental rights amounts to the violation of such rights. The policies of the State and Central governments in India are analysed from this perspective in the drinking water sector.

After a brief introduction, the UN declaration of right to water and the judicial pronouncements in India in declaring this right as part of right to life have been analysed. An attempt is made to analyse the low priority given to this sector overtime and the access to drinking water by principal source. As India has started vigorously pursuing structural adjustment policies since 1991, there has been a paradigm shift towards commercialization of infrastructure services, including water sector. After discussing this shift, privatization of water in terms of the growth of bottled water business, groundwater extraction and leasing of rivers in favour of private sector are analysed. Water pricing as a mechanism to favour the corporate sector has been briefly mentioned with respect to Hyderabad city.

Right to Water: International Covenants

Ever since the original Universal Declaration of Human Rights (UDHR), the right to water has been declared, explicitly or implicitly, as an essential component of right to life in particular and human rights in general in a number of international declarations over the years (see Annexure I). In the international agreements, water was implicitly considered to be a fundamental resource. Moreover, several of the explicit rights especially those guaranteeing the rights to food, health and development cannot be attained without guaranteeing access to clean water (Gleick, 1999). The Declaration on the Right to Development adopted by the UN in 1986 and the Second UN World Conference on Human Rights in 1993 declared and reaffirmed that that right to development is a universal and inalienable right and an integral part of fundamental human rights (Sengupta, 2001).

The original UDHR was not intended to be all-inclusive and the explicit inclusion of right to water was deemed unnecessary because of it being so essential to human existence. The right to life is clearly set forth in Article 6(1) of the International Covenant on Civil and Political Rights (ICCPR) which states that 'this right shall be protected by law. No one shall be arbitrarily deprived of his life'. Since water is indispensable for life, the State policies that are likely to lead directly to diminished accessibility and affordability of water in effect will deprive people of life. Commenting on water privatisation, automatic tariff adjustments to increase the price of water and the subsequent diminished access of water to the poor in Ghana, it was observed that 'pursuance of such policy could be construed as an 'intentional deprivation of life' under international and Ghanaian law, observed the international fact-finding committee on water privatisation in Ghana (ISODEC, 2002: 69-71). Persistent conditions of underdevelopment in which millions of people are 'denied access to such essentials as food, water, clothing, housing and medicine in adequate measure' represent a clear and flagrant 'mass violation of human rights' (United Nations, 1995 as citied in Gleick, 1999).

For the first time, the United Nations Economic and Social Council, Committee on Economic, Social and Cultural Rights, in its twenty-ninth session (General Comment No. 15), has explicitly declared right to water as a fundamental right under right to life and placed several obligations on State parties to ensure and enable the citizens to realize the right. It is

clearly stated that safe drinking water is fundamental for life and health and it 'is a precondition for the realization of all human rights'. Every citizen is entitled 'to *safe, sufficient, affordable and accessible* (italics from the original) drinking water that is adequate for individual requirements (drinking, household sanitation, food preparation, and hygiene'. Further, 'the manner of the realization of the right to drinking water must also be sustainable, ensuring that the right can be realized for present and future generations' (United Nations, 2002).

The General Comment has further elaborated the important provisions of the right. To *ensure safety*, the 'water must be free from microbes and substances that constitute a threat to a person's health, and be of an acceptable colour, odour and flavour'. For *sufficiency*, the water supply must be 'approximately 50 litres, or the minimum essential level of 20 litres' for daily individual requirements and the supply must be regular. *Affordability* must be ensured in terms of the direct and indirect costs of securing drinking water. And it must not compromise the realization of other Covenant rights. *Accessibility* to the water must be within the premises or immediate vicinity and it should be regular, physically secure and avoid prohibitive waiting times. In implementing the right to drinking water, like any human right, State parties have to be non-discriminatory and maintain equality. Further, special attention should be given to women, children, minority groups, indigenous peoples, refugees, asylum seekers, internally displaced persons, migrant workers, prisoners, detainees etc., who have traditionally faced difficulties in exercising the right to water (Ibid.).

The right to water imposes obligations to respect, *protect and fulfill* on States parties. The obligation to respect requires that States parties refrain from interfering directly or indirectly with the enjoyment of the right to drinking water. This obligation includes, *inter alia*, refraining from engaging in any practice or activity that denies or limits equal access to adequate drinking water. The obligation to protect requires State parties to prevent third parties from interfering in any way with the enjoyment of the right to drinking water. This obligation includes, inter alia, adopting the necessary and effective legislative and other measures to restrain, for example, third parties from denying equal access to adequate drinking water, and polluting and inequitably extracting water resources. The obligation to *fulfil* requires State parties to adopt the necessary measures directed towards the full realization of the right to drinking water. It includes, *inter alia*, according

sufficient recognition of the right within the national political and legal systems to realize the right; ensuring that the right is affordable for everyone particularly in rural and deprived urban areas. The obligation to *fulfil* is disaggregated into the obligations to *facilitate*, promote and provide drinking water by adopting various measures especially where individuals or groups are unable to realize the right for reasons beyond their control (Ibid.).

The General Comment categorically states: 'water should never be used as an instrument of political and economic pressure'. On privatization of water services, it states that it 'should be deferred until an effective regulatory system is in place, that is in conformity with the Covenant and this General Comment'. The importance of water has been stressed in the realization of all other Covenant rights. This includes, *inter alia*, aspects of the right to food, the right to health (including environmental hygiene) and the right to work. No individual shall be deprived of minimum essential level of drinking water under any circumstances.

One of the five main principles of the Local Government Water Code says 'access to clean and affordable drinking water is a fundamental right. As such, governments have an obligation to ensure water and sanitation services for all' (Lisbon Principles, 2001). The other four principles are that water must be governed as a common good; water must be protected as the ecological foundation of life; water must be managed as a finite economic resource; and water must be preserved as a shared cultural asset. Access to safe water is of crucial importance for the well-being and health of the most vulnerable sections of society, especially children, who are very sensitive to the diseases caused by polluted water. Given the externalities generated by water-borne diseases, it is in the general interest that everybody should have access to safe water (Smets, 1999: 13)

Right to Life and Right to Water in India

The positive impact of the international declarations, knocking by the civil society groups at the doors of justice, and judicial interventions by the Supreme Court and several High Courts created a favourable atmosphere for considering access to drinking water a right in India. Under fundamental rights in the Constitution of India, Article 21 entitled 'protection of life and personal liberty' states: 'no person shall be deprived of his life or personal liberty except according to procedure established by law' (GoI, 1986: 7). This has popularly come to be known as Article on 'right to life'. Over the

years, as new problems of citizens' rights and welfare and the role of the State came up before the judiciary, the scope of the right to life has been expanded considerably. In other words, the 'Supreme Court breathed life' into the words of Article 21 (personal life and liberty) as 'life with human dignity, with all faculties intact' (Venugopal, 2003). In course of time this concept has been expanded to include several other vital aspects of human life like 'pollution free water and air for full enjoyment of life', health, environment, housing etc.[4] Public interest litigations played a significant role in this process.[5]

In view of the scope of this right, environmental, ecological, air and water pollution etc., are regarded as amounting to violation of Article 21. Further, 'the entitlement of citizens to receive safe drinking water (potable water) is part of the right to life under Article 21' (Sinha, 2001: 48-49). As early as in 1984 *(in Bandhua Mukti Morcha vs. Union of India case)*, the Supreme Court developed the concept of right to 'healthy environment' as part of the 'right to life' under Article 21. The Court, in a recent judgement (1 December 2000), had observed that 'in today's emerging jurisprudence, environmental rights which encompass a group of collective rights are described as "third generation" rights'.[6] The rights found in the International Convention on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights are considered as the 'first generation' and 'second generation' rights respectively.

The Court recently reiterated again that 'the right to access to clean drinking water is fundamental to life and there is a duty on the state under Article 21 to provide clean drinking water to its citizens'.[7] The State is duty bound not only to provide adequate drinking water but also to protect water sources from pollution and encroachment. Any act of the State that allows pollution

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[4] Some of these rights are 'right to privacy, right to go abroad, right to legal aid, right to medical assistance, right to shelter, right to speedy trial, right to pollution-free water and air, right to reasonable residence, right to food, clothing and a clean and healthy environment' (Venugopal, 2003).

[5] The Supreme Court, in S.P. Gupta and Others v President of India and Others (1982), defined public interest litigation as a 'judicially innovated new strategic device for purpose of providing access to justice to large masses of people who are denied their basic human rights and to give judicial redress for legal wrong or injury caused to such determinate class of persons' (ILR, 2001: 44).

[6] A.P. Pollution Control Board II v Prof. M.V. Naidu and Others (Civil Appeal Nos. 368-373 of 1999). Cited from John Lee 'Right to Healthy Environment', *Columbia Journal of Environmental Law,* Vol. 25, 2000.

[7] Ibid.

of a water body 'must be treated as arbitrary and contrary to public interest and in violation of the right to clean water under Article 21'.[8]

Prior to this judgment, the Supreme Court as well as several High Courts in States in India upheld the citizens' right to have access to clean drinking water as a fundamental right as per Article 21. In *Subhash Kumar v State of Bihar* (1991), the Supreme Court of held that the right to live 'includes the right of enjoyment of pollution-free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has right to have recourse to Article 32 of the Constitution for removing the pollution of water or air which may be detrimental to the quality of life'. In *M.C. Mehta v Kamalnath* (1997) the Supreme Court categorically ruled that the State is not only bound to regulate water supply, but should also help realize the right to healthy water and prevent health hazards. The principle of Roman Law 'salus populi est suprema lex' (welfare of the people is paramount law) is the abiding preambular faith in Indian Constitution and the 'State is assigned a positive role to help people realize their rights and needs'. In *State of Karnataka v State of Andhra Pradesh* (2000) the Court held that the right to water is a right to life, and thus a fundamental right. In *Narmada Bachao Andolan v Union of India* (2000) it was held that 'water is the basic need for the survival of human beings and is part of the right to life and human rights'. The A.P. High Court, while citing several of the above-mentioned rulings of the Court, reiterated the responsibility of the State in providing clean drinking water to the citizens in *P. R. Subhash Chandran v Government of Andhra Pradesh & Others* (2001). Thus, in the Indian Constitution, providing every citizen with adequate clean drinking water and protecting water from getting polluted is a fundamental Directive Principle in the governance of the State as well as a penumbral right under Article 21 (ILR, 2001: 85-104).

Is Drinking Water a Priority?

One of the main causes of low state of health in India at the time of independence in early 1950s was lack of, among other things, safe water supply and sanitation. A glance through different Five Year Plans (hear

[8] The Court was dealing with, and prohibited, the setting up of a water polluting industry within 10 km radius of Osmansagar and Himayatsagar, the two water bodies that supply drinking water to Hyderabad city. The Court applied the 'precautionary principle' to protect these two water bodies.

after Plans) since independence reveals that this vital sector has not received the high priority it deserves for enhancing the well being of the people.[9] In the First Plan (1951-56), provision of safe and adequate water was recognized as a basic requirement deserving to receive the highest priority. It was admitted that 'though the provision of protected water supplies was started in India about the same time as in England and U.S.A., the progress made has been little.' Hardly 5 per cent of the houses had latrines in rural areas. With the rise in industrialization and urbanization, the pollution of water sources by indiscriminate discharge of wastes from industrial plants and sewerage effluents from towns and cities has become a problem over the years. It was admitted in the Fourth Plan (1969-74) that water-related diseases constitute nearly 80 per cent of the public health problems in India.

The global concern with the need to provide drinking water and elementary sanitation to the people in developing countries led the United Nations Water Conference at Mar del Plata (Argentina) in 1977 to call for a ten-year campaign by member-countries and international agencies to provide access to safe water and sanitation for all people. This Conference, to which India is a signatory, resolved that 'all people whatever their stage of development of their social and economic conditions have the right to have access to drinking water in quantum and of a quality equal to their basic needs'. The decade of 1981-90 was designated as the International Drinking Water Supply and Sanitation Decade. Though India has pledged its full support to the action plan under the International Decade, the overall progress has been only marginal.

The National Water Policy was announced in 1987 giving high priority to drinking water supply but in implementation it had not made much difference. The Seventh Plan (1985-90) admitted that the 'high rate of incidence of death and disease in urban poor settlements can be attributed largely to the poor quality of water and sanitation facilities'. The approach in the Eighth Plan (1992-97) was to extend safe drinking water facilities to the remaining urban population so as to achieve the goal of 100 per cent coverage of population by the turn of the century. In rural areas, the Plan gave high priority to 'no-source' hard-core problem villages and all the partially covered villages numbering about 150,000. The Ninth Plan (1997-02) document reiterated that the government is 'committed to provide drinking water to

[9] Information relating to the Five Year Plans has been obtained from the Planning Commission's website www.planningcommission.nic.in .

every settlement in the country within 5 years'. The Ninth Plan sub-group of the Planning Commission on Environment and Health had concluded that the unsatisfactory progress in supply of safe drinking water and sanitary disposal of solid and liquid waste has contributed to the continued high morbidity from water-borne and vector-borne diseases. The Tenth Plan (2002-07) proclaims that safe drinking water should be provided in accordance with the stipulated norms on a sustainable basis to all habitations by March 2004.

Despite tall claims and concerns about the importance of providing adequate drinking water to all citizens, allocations to the urban water and sanitation sector have never crossed even 2 per cent of the Plan funds of the Government of India since independence (Table 1). During this period, the number of urban population has gone up from 61.6 million to about 286 million and, as a percentage of total population, it has increased from 17.3 to 27.8 percent during 1951 to 2001. Though water is a state subject, the low priority given by the central government to this vital sector is reflected in the low allocations despite more than four-fold increase in urban population.

The social sector expenditures (which include, among other things, education, health & family welfare, water supply and sanitation) as per cent of Gross Domestic Product (GDP) and total public expenditures were lower in the 1990s as compared to those of the 1980s in India. This has happened despite a rise in the national income by 5.37 percent in 1980s and 6.13 percent in 1990s and the per capita income by 3.24 percent in 1980s and 4.38 percent in 1990s (Hanumantha Rao and Mahendra Dev, 2003: 44).[10] Endemic hunger (insufficiency of food, along with the inadequacy of related commodities such as clean water etc.), nutritional deficiency and greater susceptibility to illness and disease kill people in a more concealed manner, rather quietly. A terrible sequence of deprivation, debilitation, and decimation is taking place, covering much of the population of the poorer countries in the world' (Sen, 1990).

It has been argued in India that whatever water supplies are occurring in urban areas have not been charged properly. This has happened because

[10] Almost two-thirds of children in South Asia are underweight compared to one-sixth in Sub-Saharan Africa despite much higher growth rates and more robust food production in the former (Haq, 1997).

the middle and upper income groups in urban areas have been the main beneficiaries of the subsidized water supplies. A study on Delhi argues that the domestic water tariff in Delhi is the lowest as compared to other major cities in India (Aurora, 1999).[11]

Table 1

Plan Outlays on Urban Water Supply and Sanitation (UWSS)

(Current Prices in Rs.Billion)

Plan period	Total outlay	Outlay for UWSS sector	Percent of total outlay	Urban population (million)	Per cent of urban population
1	2	3	4	5	6
First Plan (1951-56)	33.59	0.43	1.28	61.6	17.3 (1951)
Second Plan (1956-61)	67.69	0.44	0.65	--	--
Third Plan (1961-66)	85.93	0.89	1.04	77.6	18.0 (1961)
Fourth Plan (1969-74)	159.32	2.82	1.77	--	--
Fifth Plan (1974-79)	392.46	5.49	1.40	107.0	19.9 (1971)
Sixth Plan (1980-85)	976.07	17.67	1.81	156.4	23.3 (1981)
Seventh Plan (1985-90)	1797.42	29.66	1.65	--	--
Eighth Plan (1992-97)	4334.84	59.82	1.38	212.9	25.7 (1991)
Ninth Plan (1997-01)	7800.00	117.00	1.50	285.4	27.8 (2001)

Source: O.P. Mathur (2000) and census records.

Note: Figures in columns 5 and 6 are for the same census years, given in the parenthesis of the last column.

India's capital city is a classic case of inequity in distribution as well as high subsidy in water supply for its elite and middle classes. In India, non-priority use of water and its wastage is high because of low user charges, which do not show significant progressivity with increasing consumption. The exemption limits fixed by the authorities in many States are high that enables the urban rich not to pay for a substantial part of their water consumption. And the 'pricing of water has not been applied as an instrument to rationalize its use which could have increased water availability in the slums' (Kundu,

[11] The water rate per Kilo Litre (cubic metre) in Delhi is Rs. 0.35 upto 20 KL per month, and Rs. 0.70 for 20- 25 KL; Calcutta - Rs. 40.00 to Rs. 65.00 flat rate per month; Mumbai - Rs. 1-2.75; Bangalore - Rs. 2.80 to 3.00; and Ahmedabad - Rs. 3.00. See Aurora, 1999.

1992). Thus, the rich and upper middle classes in urban areas have been enjoying water supplied by the public utilities at subsidised rates while the supplies have been low or inadequate to large sections of the poor and low-income population.

Access to Drinking Water

The National Commission on Urbanisation (NCU) had observed that it is 'inequitable distribution which causes real problems' than the lack of water and that the 'water supply system is unequal and unjust, being highly biased in favour of the rich' in Indian cities. The NCU considered 70 litres per capita per day (lpcd) as the absolute minimum and 90 lpcd as a desirable level (with 110-120 lpcd as a more desirable scenario) to carry on life at a minimum standard of hygiene.[12] It strongly recommended that even in the worst of drought conditions and even in the poorest colonies it is imperative that at least 70 lpcd of water be delivered so that human life can be sustained. To achieve this, the distribution systems have to be overhauled in such a way that even the poorest colony is ensured the minimum supply on a regular basis (NCU, 1988: 293-301). Gleick (1999) estimates 50 lpcd as a true minimum to sustain life in moderate climatic conditions and average activity levels.

The latest data from the National Sample Survey Organisation (NSSO) for 1998 indicates that about 70 percent of urban and 18.7 percent of the rural households had access to piped water supply (i.e. tap as the principal source) in India (Table 2). This proportion has come down from 72.1 per cent in 1988 for urban whereas there is a marginal increase in rural areas. Distance separating the households from their principal source of drinking water is an important indicator of the level of living of the household members. Only about 31 percent of rural and 66 percent of urban households reported their principal source within the premises of their dwelling units. For about 60 percent of rural and 32 percent of urban households the principal source was outside the premises but within a distance of 0.2 km. (NSSO, 1999).

[12] The minimum required quantity of water is put at 40 lpcd by the National Drinking Water Mission (Government of India) and 50 lpcd by the United Nations Economic and Social Council, General Comment No. 15.

Table 2
Percentage Distribution of Households by Principal Source of Drinking Water and Sanitation in India: 1988-1998

Source	Rural			Urban		
	1988	1993	1998	1988	1993	1998
Tap	15.5	18.9	18.7	72.1	70.4	70.1
Tubewell,hand pump	39.1	44.5	50.1	17.2	18.5	21.3
Well	39.1	31.7	25.8	9.2	8.6	6.7
Tank, ponds etc.	2.2	2.1	1.9	0.3	0.8	0.3
River/canal/lake	2.4	1.7	1.3	0.3	0.1	0.2
Spring	1.4	0.9	1.7	0.2	0.1	0.1
Other	0.6	0.3	0.4	0.8	1.4	1.1
All	100.0	100.0	100.0	100.0	100.0	100.0
No latrine used	89.0	85.8	82.5	31.8	30.6	25.5

Source: NSSO (1999).

Note: Sources of estimates for 1988 and 1993 are NSSO 44th and 49th Rounds respectively.

While the access to safe drinking water by tap has declined in urban areas during 1990s, dependence on groundwater as the principal source (tubewell/ hand pump) has increased both in rural and urban areas. About half of rural population are now relying on groundwater and dependence on open wells (25.8 per cent) continues to be high. The declining quality of groundwater due to pollution is posing health problems in India. About 44 million are estimated to be affected by problems related to water quality-excess of fluoride, iron, nitrate, arsenic, heavy metals and salinity (Shiva et al, 2002: 3).[13] A fact-finding committee that went to investigate three starvation deaths in Kusumatand village in Manatu block of Palamau district of Jharkhand State (much of this State was carved out of Bihar State) found that the villagers drank highly polluted water and there was 'a horrendous trail of illness and death' directly related to lack of food and clean water (www.geocities.com/righttofood , cited from Mahendra Dev, 2003: 28).

[13] Of the 3359 habitations in Nalgonda district of Andhra Pradesh, 1122 habitations are affected by high levels of fluoride content in drinking water. In more than 200 of these villages, the high level of fluoride content is causing 'skeletal fluorosis', a disease that stiffens neck and back, affects chest, results in deformation of bones and causes generalized fleeting pain etc. This disease is prevalent in some other parts of the State and also other States like Bihar, Kerala, Maharashtra, Punjab and Tamil Nadu. Fluorosis affects children more than adults (ILR, 2001).

There are several States in India in which tap water is the principal source for less than 10 per cent of rural households and they are highly dependent on groundwater (Table 3). In urban areas, the coverage is much less than that of all-India average in Bihar, Kerala, Uttar Pradesh and West Bengal. Dependence on groundwater is also quite high in urban areas of several States. Percentage of households not using a latrine is close to and over 90 percent in rural areas in a few States. There are some States in which the urban households not using a latrine constitute 30-45 percent. Public health standards may be very low in these States. The figures for Kerala are low for tap and tubewell/hand pump and also 'no latrine' categories for both rural and urban areas. It should be noted that Kerala has the highest

Table - 3
Percentage of Households with the Principal Source of Drinking Water and the Sanitation Facility in Major States in India: 1998

State	Drinking water source				No latrine used	
	Rural		Urban			
	Tap	Tubewell/ handpump	Tap	Tubewell/ handpump	Rural	Urban
1. Andhra Pradesh	26.2	46.9	75.1	12.8	88.5	30.8
2. Assam	7.3	49.5	42.2	38.4	24.7	2.0
3. Bihar	0.7	70.3	35.3	43.1	89.4	45.3
4. Gujarat	46.6	31.7	91.1	7.3	79.9	21.1
5. Haryana	31.1	49.9	80.5	19.4	84.5	32.9
6. Karnataka	26.6	53.9	80.9	11.2	88.9	30.0
7. Kerala	10.6	1.4	40.2	3.5	23.1	5.1
8. Madhya Pradesh	5.0	52.2	76.1	13.1	94.5	45.2
9. Maharashtra	41.1	24.4	92.0	5.3	85.8	15.8
10. Orissa	2.9	53.2	38.7	32.3	96.1	35.8
11. Punjab	14.8	82.7	64.4	35.5	67.9	14.8
12. Rajasthan	19.2	36.2	85.4	10.4	87.0	25.5
13. Tamil Nadu	50.0	31.1	74.0	18.7	88.5	32.5
14. Uttar Pradesh	8.8	63.5	43.2	53.2	90.6	28.2
15. West Bengal	4.1	75.6	56.0	38.2	76.1	15.2
India	18.7	50.1	70.1	21.3	82.5	25.5

Note: These 15 major states account for about 90 percent of the population of India as per 2001 census. For the inter-state analyses, these 15 major states are considered by most of the scholars. There are a total of 35 States and Union Territories in India.
Source: NSSO (1999: 40, A-27 to A-39).

level of indicators for education, health and social development in India. For drinking water, open wells are the principal source for a very high percentage of households (55.4 in urban and 85.1 in rural) in this State.

Changing Paradigm: Shift Towards Water Privatization

During the economic liberalization period in 1990s, a set of measures favouring total reduction in subsidies, full cost recovery, privatization etc., has been promoted around the world. This logic has extended to the water sector as well. The world has witnessed increasing privatization of public sector water utilities in several countries. This trend may be traced to the late 1970s when there was a shift away from the statist and towards neoliberal (free market) policies in the North. The neoliberal doctrine advocates that social and economic development can be undertaken by business within the free market while the State should play a facilitating and regulatory role without direct engagement. This agenda was simultaneously adopted by the North-dominated financial institutions (primarily the World Bank and International Monetary Fund) which, 'using their leverage as creditors, aggressively promoted neoliberal reforms to governments of indebted low- and middle-income countries' (Budds and McGranahan, 2003 cited from Gutierrez, 2001).

The Dublin Conference on Water and Environment in 1992 unfolded a new approach to water resources management, which encouraged privatization of water sector in developing countries. It declared that water has an economic value and must be treated as an economic good. It also stated that access to water and sanitation are fundamental human rights but at affordable prices. The fourth principle of the Dublin Declaration: states:

> Water has an economic value in all its competing uses and should be recognized as an economic asset. Following this principle, it is especially crucial to recognize the basic right of all human beings to have access to drinking water and sanitation at affordable price. Past failure to recognize the economic value of water led to wastage and to uses that were harmful to the environment. To manage water as an economic asset is an important path to the achievement of efficient and equitable use, and to the encouragement of the conservation and protection of water resources (Petrella, 2001: 65-66).

The World Bank and the International Monetary Fund (IMF) have started demanding water deregulation in several countries as part of their lending conditions. Out of 40 IMF loans disbursed through the international finance corporations in 2000, 12 had requirements for partial or full privatization of water supply, full cost recovery and elimination of subsidies (Shiva, 2002: 6). Over 40 percent of World Bank loans approved in 2001 for water and sanitation sector contain privatization of water utilities as a condition (ISODEC, 2002: 44). A scrutiny of World Bank's lending in this sector during 2000-2004 reveals that a very high proportion of the loan amounts are tied to promotion of privatisation and cost recovery (Grusky and Fiil-Flynn, 2004).

Following the structural adjustment policies in India since 1991, the Eighth Plan (1992-97) made a significant departure from the past in giving a thrust towards privatization of water sector. The main thrust and strategies were, among others, to: manage water as a commodity in exactly the same way as any other resource; encourage private sector for construction and maintenance of drinking water projects and mobilize them to the maximum extent feasible; and ensure that, in urban areas, municipalities are free to levy and raise appropriate user charges for drinking water and sanitation facilities in order to strengthen their financial position. The Tenth Plan (2002-07) also further stressed the philosophy of liberalisation in water sector:

> Water needs to be managed as an economic asset rather than a free commodity in the same way as any other resource… Supply of water to consumers should normally be based on the principle of effective demand that should broadly correspond to the standard of service which the users as a community are willing to maintain, operate and finance (p. 633).

The Tenth Plan, however, advocates special provisions to the poor who have less capacity to pay. Thus, from the Eighth Plan onwards, water has come to be treated as an economic good like any other commodity in India's official Planning Commission documents.

An expert group on commercialization of infrastructure constituted by Ministry of Finance, Government of India, recommended several measures to operate infrastructure projects, including urban water supply and sanitation, on commercial lines either by private parties or through public-private partnership (GoI, 1996). The philosophy of commercialization is enunciated thus:

> A commercial approach requires a demand orientation: services should be supplied in response to demand rather than in anticipation of demand. This will also improve cost recovery and financial viability of such projects. Commercialization of infrastructure projects basically means efficient provision of service to the consumers' satisfaction on cost-recovery basis (pp. 26-27). Water tariff should be increased gradually to reach cost-recovery level. Part of the required increase may be capitalized and charged as connection charges….Metering of water supply must be promoted (p. 28). The efficacy of commercialization would also be contingent upon the ability to segregate payers and non-payers and prevent any incidence of free-riding. The scope for enforcing excludability (that is, a user can be prevented from consuming the service) would be one of the key parametres for facilitating commercialization (p. 111).[14]

The National Water Policy (2002) of the Government of India has reflected the changing paradigm in the water sector and included encouragement of 'private sector participation in the planning, development and management of water resources projects'.

Experiences of structural adjustment policies in Latin America reveal that water prices have increased considerably along with a decline in quality of services. About 40 million poor people in cities do not have access to safe water either because 'they can not afford the cost of connection or their service has been disconnected because of lack of payment' (Anton, 1993). As a result of the conditions attached to World Bank lending in Ghana, water tariffs were raised by 95 percent in May 2001. For the poor who were outside the piped water system, purchasing three buckets of water a day costs between 10-20 percent of the average daily income. In the document prepared for private sector participation, economic criteria were given 60 per cent weightage as against only 10 percent for public health and nothing for poverty (ISODEC, 2002: 7-8). Negative public health effects, including resurgence in dysentery, dramatic increase in 'water poverty' etc., have incited the advocacy groups and municipalities in the United Kingdom to wage public campaigns against water companies whose practices were seen to impact most severely the 'vulnerable' groups (Bakker, 2001).

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[14] Literature abounds with examples of large-scale disconnections of water supplies by private companies to households who did/could not pay water charges in the UK, Latin America and Africa. See several articles in www.psiru.org for the role of water-MNCs and the World Bank especially in Africa and Latin America, and www.democracyctr.org for Bolivia and Bakker (2001) for the U.K.

Without effective regulation, privatization of water is likely to benefit those who can afford a connection with the main supply system. The urban poor will again be overlooked (Kalbermatten, 1999). The right of every human being to have access to water will become a matter of secondary and quite subordinate interest if the future is left to the water companies and to their logic of profit and competition (Petrella, 2001: 81). The problems faced by the common people of Cochabamba, Bolivia and their valiant struggle against water privatization are too well known in the world.

Bottled Water Business

Bottled water or packaged water sector is considered to be one of the fastest growing business sectors in India. Several big Indian and multinational corporations have entered into the water business sector in a big way. This market is estimated at US $104 to 145 million and the sales had increased from 95 to 935 million litres between 1992 and 2000. The growth rate of this sector is put in the range of 30-70 percent per year. The growth of this market is predicated upon the failure of the governments to provide clean drinking water to the citizens and the increase in demand for clean water due to environmental pollution. This industry has seen as many as 180 players in the market selling as much as 1,000 million litres of water each year (Shiva, 2002: 16-17; Sharma, 2002; *Down To Earth*, 15 February 2003; www.corpwatchindia.org). The government agencies are also encouraging consumption of bottled water instead of consuming municipal water in the official meetings.[15] The government estimated that by March 2001, about 6540 million cold drink bottles were sold annually, which means a per capita of 6 bottles for the billion Indian population. The consumption in Delhi is estimated to be as high as 50 bottles per capita. With the companies now busy in wooing rural markets, 'colanization is here to happen' in India (*Down to Earth,* 15 August 2003).[16]

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[15] The message coming out from official meetings and conferences participated by the Chief Minister, Ministers, and senior officials in Hyderabad is that the municipal water is unfit for consumption by the very important persons (VIPs) thereby conveying to the public that it is only for the ordinary folks. In all the official meetings that take place in the A.P. State secretariat, bottles appear on tables as a complete replacement to municipal water (*The Hindu,* July 11, 2003, Hyderabad)

[16] Coca-Cola will spread to 40,000 more villages in India in 2004, taking the number of villages covered to 200,000. The company expects the per capita consumption of soft drinks in the country to increase from 10 bottles last year to 15 bottles this year. The consumer base is also estimated to increase from 240 to 300 million (*Business Line*, May 6, 2004).

The low quality and poor standards maintained by the big names in the bottled water and soft drinks sector have been severely exposed in recent years in India. Despite all the hype they generate in advertisements by celebrities (especially sports and film stars), these companies have little regard for public health standards. A number of regional and local level players have also entered into this sector. The country was shocked to know from the tests conducted by the Delhi-based Centre for Science and Environment (CSE) that the bottled water of most of the brands contained pesticide residues that are harmful to health. The CSE conducted laboratory tests on 34 samples of 17 different brands of bottled water that are commonly sold in the national capital region of Delhi. The samples include five top brands of big companies (Bisleri, Bailley, Pure Life, Aquafina, and Kinley, the last three brands manufactured by Nestle, Pepsi and Coca Cola respectively). Pesticide residues, which are extremely harmful to human health, were found in all the samples except the imported Evian. Pesticide residues were found to be 36.4 times higher than the European Economic Commission (EEC) stipulated levels. While the citizen is willing to pay for bottled water that guaranteed health, the water 'industry has been fooling him/her' and the 'regulatory authorities have abandoned the citizen' *(Down To Earth, 15* February 2003*).*

The soft-drink consuming middle class was jolted again in August 2003 with revelations by the CSE that the total pesticides were 36 times higher in the PepsiCo brands and 30 times higher in Coca Cola brands of soft drinks when compared to the EEC limit. Further, 'the pesticides found in the soft drinks are odiously similar to bottled water' that this organization had investigated earlier. These MNCs have been marketing products that are unfit for human consumption *(Down To Earth,* 15 August 2003*).*[17]

Public Water for Corporate Profit

While the bottled water business is conducted by the private sector, supply of raw water is made by the State through agreements for allowing the private companies to extract groundwater in large quantities, leasing of certain stretches of rivers or some reservoirs, and directly providing water

[17] In the local media in Hyderabad, one occasionally comes across reports of the presence of harmful objects like a body part of a lizard, a shampoo pouch, a cigarette butt etc. in the soft drink bottles of Coke and Pepsi. The business goes on as usual!

from the municipal supplies. Sometimes, more than one of such agreements might be in operation simultaneously at the same place. There have been attempts in India in recent years to enter into water agreements with the MNCs that have a monopoly in the world in water business. Several State governments have been taking up water and sanitation projects at huge costs with borrowing from international agencies. The Kerala High Court ordered on 16 December 2003 that the Coca Cola bottling plant at Plachimada village in Palakkad district should stop extracting groundwater and find out alternative sources of water. It was held that the groundwater belongs to the people and the government has no right to allow a private party to extract such a huge quantity.[18] This judgment has several implications in the water sector. Several private water-bottling companies are extracting groundwater in huge quantities in many States. As the local protests intensify against excessive exploitation of groundwater, this judgment may prove handy for taking the struggle to courts for justice by the affected people.

Water privatisation in India has taken the ominous form of leasing out certain stretches of rivers to private parties (Indian or multinational) in recent years.[19] Such rivers are Sheonath in Chattisgarh, Bhavani in Tamil Nadu, water from Upper Ganga canal in Uttar Pradesh etc. A 22.6 kilometre stretch of Sheonath river was leased out for 22 years to Radius Water Limited, a private company, to build a dam and use the water exclusively to the nearby industrial estate. The local farmers belonging to 13 villages are not allowed to install tube wells within one kilometre radius from the river. Traditional fishing by the villagers is not allowed. There are restrictions on the cattle in entering the Sheonath river. From the Bhavani river, a tributary of Cauvery, 100,000 litres of water is supplied daily to Coca Cola even as there is widespread drought and water scarcity in Tamil Nadu (Shiva et al, 2002). Several villages in the downstream of a check-dam across Vaitarna River

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[18] Excessive extraction of groundwater by the Coca Cola in Kerala State led to the drying up of water sources in several villages in the surrounding areas. A protest movement has been going on by the local villagers since April 2002 demanding the closure of the Coca-Cola bottling plant. On a petition by the local village panchayat, the High Court ordered that the company has no right to extract this much of natural wealth (*The Hindu,* 17 December 2003, Hyderabad).

[19] Some of the MNCs in water business in India are: Coca Cola, Pepsi, Bechtel, Nestle, Vivendi, Suez Lyonnaise, Northumbrian Water, Northwest Water, United International.

in Maharashtra State have started facing water scarcity for drinking as well as cultivation after the Coca Cola was given permission to draw 300,000 litres of water a day from the reservoir. The villages had no water problem till then (AIDWA, n.d). The crucial decisions about water privatisation between donors and the governments are made behind closed doors and without the knowledge of the citizens. Neither the donors (the World Bank or the IMF) nor borrowing governments disclose information about loan agreements and conditionalities. This is contrary to Principle 10 of the Rio Declaration that entitles individuals to access information and judicial proceedings, as well as the chance to be involved in decision-making (Sharma, 2002).

As water privatisation has increased, it has become a matter of making profits and ensuring a decent return on capital. Meeting human needs and providing water to those who need water are no longer the driving force (APPEN, 1998: 15). It appears that the major water companies have expressed concerns about investing in the Third World. Because their managers see the rates of return as inadequate. Full cost recovery from the users in water sector was not possible and poor are not able to pay for services. Social protests and withdrawal of transnational corporations (TNC) became the inevitable result (Robbins, 2003).

Hyderabad: Water Pricing Favours the rich

Hyderabad, the capital city of Andhra Pradesh State, with about 6 million population, is one of the emerging software centres in India. About 25 per cent of the city's population lives in slums. This city has been experiencing water scarcity for several years. The tap water supply is restricted to only two hours on alternate days. In several parts of the old city, contaminated water flows through rusted pipes (pipes being very old and needing replacement). In a number of such localities and slums, during January-November 2003, forty-five people died and several thousands were treated in Fever Hospital alone due to diseases caused by polluted water and poor sanitary conditions.[20] The numbers admitted and died are more than double

[20] Apart from this, patients are also admitted in several public and private hospitals in the city. As per the figures collected from local print media reports, about 2706 persons were admitted in various hospitals and about 47 persons, including children, died in several localities. One Telugu newspaper reported that in the first seven months of 2003, about 96,000 people were treated in the Fever Hospital for water and sanitation-related ailments. The similar figure for the year 2002 was 162,000 (*Andhra Jyothy,* Telugu Daily, 23 July 2003).

than those in 2002 for the same period. In Niloufer Hospital (meant for children), during May-October 2003, about 10,500 persons were treated for just two diseases, acute diarrhea and enteric fever (typhoid), of which 22 died.[21]

While this was the situation, the Hyderabad Metropolitan Water Supply and Sewerage Board (HMWSSB) has been selling one million litres of treated water daily to Coca Cola at a rate of only Rs. 25 per kilo litre (i.e. 2.5 paise per litre). The sale of water to Coca Cola was increased from 200,000 litres a day in August 2001 to one million a day in course of time. It was also observed that more water was sold to Coca Cola in May-June 2003 (compared to monthly sales earlier) when the city was experiencing one of the worst water crises and people were paying about Rs. 500-600 per tanker, i.e. approximately Rs.100-120 per kilo litre, for untreated bore-well water (*Eenadu*, 9 August 2003, Hyderabad).

The water tariff fixed by the HMWSSB applies the same price of Rs. 25.00 per kilo litre to commercial organisations like Coca Cola, five-star hotels, industries etc., and also to general hospitals (which treat patients from poor and low-income groups) and educational institutions. In the process, water charges become high for public institutions, which work for social well-being and not for profit, while water is made available very cheaply to commercial bodies. The grouping of commercial and public institutions in the same category of water tariff appears to be a clever method of favouring the rich consumers even while talking about poor financial condition of the water authority. Within the commercial organisations, there is a need to segregate companies that make business with water (bottled water and soft drinks) and they should be charged very high since water is the only raw material in their business. Another fall out of such a policy is that commercial organisations draw more water even when the drinking water crisis is acute (as happened in Hyderabad in 2003) and the water authority considers it as a source of revenue. As per this economic logic, if a public hospital is not

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[21] For the first time in about 80 years, the two reservoirs of Osmansagar and Himayatsagar that have been providing drinking water to Hyderabad dried up in 2003. People who depend on them for water had to go through very tough experience for water. The State government showed very little interest in protecting the catchment areas of these two reservoirs despite several government orders and judicial pronouncements in this regard.

able to pay for more (despite a serious need for water), it will not get water.[22] Water pricing is also used as an incentive for MNCs in the name of attracting them to Hyderabad. The Indian School of Business (ISB) takes about 300-500 kilo litres of water a day at a rate of only Rs. 4.00 per kilo litre whereas the domestic rate for citizens is Rs. 6.00 per kilo litre. That is, the corporate sector's ISB gets water cheaper than common citizens and its volume of intake is enormous compared to the small number of persons (less than one thousand) living on its campus.

Conclusion

The inadequate (or denial of) access to water and sanitation to the poor in India has been going on for a long time even before the advent of economic reforms. This has been happening despite the Supreme Court's rulings time and again that access to clean drinking water is a fundamental right as part of right to life in Article 21 of the Indian Constitution. Why is it that the same governments at State and Central levels show such callous attitude to the problem of drinking water to poor people even while adhering, in public postures, to the basic tenets of the Constitution? The hold of the rich and powerful middle class groups over the State machinery, their capacity to appropriate natural resources (public water at highly subsidized rate, in this case), and the inability of the poor to mobilise themselves into effective pressure groups over a longer period of time may be some possible explanations.

The post-liberalisation period since 1991, with the advent of the multinational capital, has made the hold of these powerful groups on natural resources and the State machinery much stronger. The enthusiasm of the State in executing large water projects through these groups is not matched even remotely by the concern in practice to extend clean water supply to the poor on a sustainable basis. In the changed circumstances, the condition

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[22] A close look at the monthly water intake of Osmania General Hospital in Hyderabad reveals that its intake in 2003 was less than one-third, sometimes less than one-sixth, of what it was in 2000. This is one of the biggest general hospitals in the State and its financial condition has not been very healthy. The reduced intake of water could be due to the reduction in the number of patients (which is unlikely) and hence less demand, or rising cost of water since the water rates were revised from 1 June 2002. This issue, however, needs further probing before coming to a definite conclusion.

of the poor and their bargaining power seem to have got further weakened in the wake of the alliance of these powerful groups with the corporate capital in water sector. The State in India has become more emboldened today than ever before to divert municipal and river waters, and allow excessive extraction of groundwater, in favour of the corporate sector. In public postures, ironically, all parties controlling the State openly adhere to the Constitution (and the fundamental right to life). The Courts, which give rulings in favour of the citizens on fundamental rights, are sadly not in a position, or rather reluctant at times, to step in to enforce the right to adequate clean water. As the State quietly and deceitfully turns away from its obligations, thus violating the fundamental right to water and life in the worst form, the 'right to water' is getting reduced to a mere slogan.

There is, however, greater awareness today on the social and economic rights of citizens. In India, the right to food campaign has gained momentum with significant positive results in recent years (Dreze, 2004). While food grains can be transported over long distances in quick time and also stored for longer duration for distribution in crisis situations, the same cannot be said of clean water. The need for water is continuous and the quantity required per capita per day is several times higher than that of food grains. Availability of clean water, transportation and storage over long distances and duration are difficult propositions to be tackled in crisis situations. Instead of simply mentioning clean water as an input in food, the right to food campaign should strongly incorporate right to water in the struggle against hunger and starvation.

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Abstract

Right to water has assumed greater significance in India in recent years. Declarations by the United Nations and other international organisations, and judicial pronouncements by the Supreme Court of India from time to time that right to water is part of right to life as per Article 21 of the Constitution of India have, among others, contributed to the growing awareness on this issue. That the State has the obligation to protect and fulfill the fundamental rights of citizens, in this case provision of clean drinking water as part of right to life, has not mattered much to the condition of the poor in this regard. In addition to the lack of access to adequate quantity of water, millions of poor have been suffering from the adverse consequences of water contamination. There has been a paradigm shift towards treating water as an economic good in India as a result of the structural adjustment policies and the State has been adopting policies that favour the corporate business in water sector. This paper analyses some of these issues and argues that the entry of the corporate capital in water sector together with the role of the State in this sector, poses a threat to the realization of the right to water for the poor and marginalized groups in India. The paper further argues that the right to food campaign should strongly incorporate the right to water in the struggle against hunger and starvation.

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