ACCESS TO WATER AND SANITATION: Country Mapping of the Human Rights to Water and Sanitation in Policy Provisions for Rural India

WaterLex Legal and Policy Country Mapping: India
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EXECUTIVE SUMMARY

Whilst the country of India is embarking on the road to Sustainable Development Goal 6, aiming to ensure access to water and sanitation for all by 2030, the many challenges pertaining to the sustainability of the water resources and the facilities to deliver related water and sanitation services, calls for more attention to the issue of inequality to access. If not addressed, the growing competing demands among sectors and between the various levels of the Federal State of India could steadily transform into a burst of water crises. In order to establish an inclusive society on sustainable grounds that organises around the sound management of water resources, there is a need for a comprehensive framework that will ensure no one is left behind. Thus the human rights to water and sanitation (HRWS) provide such a framework and its application is of major importance in two respects: First, it tests the soundness and ethical grounds of public policies. Secondly, it empowers individuals to act as agents of change within the collective and participative effort to achieve the Sustainable Development Goals.

The challenges pertaining to water governance are numerous. With 1544 m3 water availability per capita per year as per the census in 2011, the country is in a water stressed situation. A more granular assessment reveals that about 16% of its territory is considered to be facing an over-exploited situation.[1] Low water-use efficiency, in particular in agriculture uses, pollution of freshwater sources through pesticides, industrial waste and untreated urban wastewater are significantly contributing to the reduced availability of water for the needs of the population. Already the country relies on only 4% of world's renewable water resources while it accounts for more than 18% of the world's population.[2] Climate change is increasingly causing variability in the availability of the resource and translates into more severe drought and flood patterns. Moreover, the great thrust in infrastructure development, triggered by Millennium Development Goal (MDG) 7c achieved by 2015, now should come along with an improved effort in maintenance performance to avoid losing the investments and its related outcomes in terms of access to sufficient, safe and affordable water and sanitation services for all.

Recognition of HRWS in India's Legal framework

The State of India has clearly supported the recognition of the human rights to water and sanitation at the international level and ratified several human rights treaties pertaining to these rights. The process of incorporation of the latter into the legal framework is currently in process with two draft legal instruments still waiting for the required political support to come into force. Yet, since water is a State subject under the Constitution, achieving the political backup required to pass legislation on such a strategic resource at national

[1] National Institution for Transforming India (2017), Appraisal Document of Twelfth Five Year Plan 2012-17

[2] M/o Water Resources (2012), National Water Policy

level is challenging. Both laws are however critical in enabling the establishment a comprehensive framework for the implementation of the human rights to water and sanitation. The 2016 National Water Framework Bill aims at establishing a more coherent framework for the sustainable management of the water resource that still allows states to wield a significant range of power. Meanwhile, the 2016 Model Groundwater Act addresses important gaps with respect to over-exploitation patterns of groundwater resources, which accounts for about 80% of the drinking water consumed in the country.[3] Regarding judiciary powers, the Supreme Court and various judicial bodies have clearly recognised the human rights to water and sanitation derived from the right to life embodied in the Indian Constitution. Yet these progressive case laws currently lack a comprehensive definition of the HRWS backed by a legal instrument,[4] which should be addressed by the two draft legislations when adopted.

India's Development Policy Framework

Since 1992, development policies of the State of India have been impacted by a devolution process. The reform established the creation of local authorities ascribed both for rural areas, called the Panchayati Raj Institutions (PRI) and set up at three different administrative levels; and the urban areas, governed by Municipalities, whose existence has been constitutionalised through the 73rd Amendment Act and the 74th Amendment Act respectively. Both Amendment Acts entrust local authorities with powers pertaining to water supply, health and sanitation, environment protection and equity-related issues. These powers came along with responsibilities in a wide range of other sectors. The required devolution of financial and human resources represents therefore a significant endeavour that is still in process. Drinking water is comparatively well positioned with respect to other tertiary sectors as it has been ranked third in the progress of resource transfer to PRI.[5]

Concerning the planning process related to development policies, the Union Government coordinates all sector fields through planning authorities' development priorities that hold sway on the work of its line ministries. Yet, planning policies from Central State have undergone a major governmental reform with the closure of the National Planning Commission, an institutional body in place since the independence of the State of India that produced Five Year development plans and elaborated inter alia draft model bills on water. The Twelfth Five-Year Plan – spanning from 2012 to 2017 – thus ends a 60-year long period of policy implementation on the basis of that instrument. This decision takes part of the current Central Government's strategy to induce a new approach to development that is now being steered by the National Institution for Transforming India (NITI Aayog), established in January 2015. The momentum is hence characterised by a high degree of uncertainty on the shaping of policies that concern, amongst others,

[3] Planning Commission (2012), Twelfth Five Year Plan (2012–2017) – Faster, More Inclusive and Sustainable Growth – Volume 1

[4] Cullet, P. (2013) Right to water in India – plugging conceptual and practical gaps, The International Journal of Human Rights, 17:1, 56-78

[5] Tata Institute of Social Sciences (2016), Devolution Report 2015-16: Where Local Democracy and Devolution in India is heading towards?, Mumbai, commissioned by Mo/ Panchayati Raj

the incorporation of the HRWS into the national policy framework.

The framework for water and sanitation, the Union Government sets up broad goals through its line ministries with targetsto be achieved by States and their related devolved authorities. The national policy implementation mechanisms often display a leeway for States to decide as to how the policy provisions are to be carried out. Accordingly, States are required to define their own goals and targets in alignment with the national framework and to produce the relevant action plans in order to meet their targets. The current main Centrally Sponsored Schemes in the field of rural drinking water and sanitation are:

- The 2013 National Rural Drinking Water Programme that aims to provide every rural person with adequate safe water for drinking, cooking and other domestic basic needs on a continuous and sustainable basis;
- The 2014 rural sanitation programme called Swachh Bharat Mission aiming to achieve the end of open defecation in India by October 2019 for the 150th Birth Anniversary of Mahatma Gandhi, as well as develop solid and liquid waste management systems to improve cleanliness.

Analysis of the HRWS in the Policy Provisions for Rural India

Against this backdrop and in order to contribute to the reflection of the contribution of the human rights to water and sanitation for sustainable services in India, the present study aims to take stock of the inclusion of various components of these rights within the policy and guidelines provisions pertaining to rural drinking water and sanitation.

The outcomes of the study point to several gaps that should be addressed to improve the realisation of HRWS, whose main ones are the following:

Minimum Standards for water availability:

First, there is need to clarify the standard related to availability of water. On the basis of the 2011-2022 Strategic Plan on Ensuring Drinking Water Security in Rural India,[6] the policy framework established a progressive ladder of service delivery spanning from 40 litres per capita per day (lpcd) as the basic minimum level, to 55 lpcd as the minimum level and up to 70 lcpd as the long-term target for 2022. Yet the basic minimum level had to be progressively confined to extreme cases while 55 lpcd was to become the reference norm by 2017. However, it is not clear when and how this transition is to take place.

Minimum Standards for public facilities:

The study found no official standards with respect to the ratio to comply pertaining to the potential of water and sanitation and their users in order to ensure the availability criteria of the HRWS. In particular, schools and Angawandis would benefit of having determined water quantities and toilets per gender incorporated in a standard ratio respectively by pupils and by health centre beds, in order to best define when these public institutions may be considered as covered.

[6] M/o Rural Development, Department of Drinking Water and Sanitation (2011), Strategic Plan – 2011- 2022: "Ensuring Drinking Water Security In Rural India"

Monitoring Affordability: Related to the extension of piped water schemes, is the issue of affordability of water and sanitation services. Although affordability may be found as an ethical principle in statements integrated in the policy framework, its operationalisation is not straightforward. In particular, it lacks the definition of threshold values to assess the extent to which disposable household incomes should contribute to water and sanitation direct and indirect costs. Hence, at household level, the latter would require a strong coordinated approach to consolidate water, sanitation, hygiene costs, topped by energy costs in case of community-based management facilities. Moreover, disconnection policy should be compliant with human rights standards in case households rely on grid water and sanitation schemes, and this is often lacking. This is a main concern given the shift toward piped water supply in the rural drinking water sector .

Water quality/safety: Another component that would benefit from significant government attention is the issue of water quality. Although water security planning connects both water resource management and management at the point of delivery, there is no definition of uniform and legally compulsory quality standards across the country.

Non-discrimination and inequalities: In order to avoid any exclusion from water and sanitation facilities, there is a need to question the reliability of safeguards for non-discrimination in planning processes for water security plans and the sanitation-related Swachh Bharat action plans. Even though a cause of economic exclusion has been addressed when the mandatory community contributions to capital expenditures to water facility has turned optional, a sound policy should identify and address all possible roots causes of discrimination. This appears by no means easy to tackle as it touches upon the relationships between community members and their ties with the three-level local authorities, known as the Panchayat Raj Institutions. The debate on community-led demand shortcomings should be addressed and lead to innovative solutions, for instance those introducing target-based planning organised on reliable and disaggregated data.

Transparency, public participation and accountability: Another crucial driver to improve governance are the mechanisms pertaining to transparency, public participation and accountability. In that regard, the sector has already integrated provisions to organise community monitoring and social audits for water and sanitation services. Civil society organisations engaged in the sector have nonetheless advocated to render social audits mandatory not only at village, but also at block and district level. This recommendation would enable them to understand how services requests are processed within the bottom-up approach to planning for water and sanitation.

As the new framework agenda of the Sustainable Development Goals is swiftly shaping a new organisation of the development policies, it is hoped that this study will provide a timely input to reflect on the manner in which the human rights to water and sanitation may contribute to an enabling framework for the achievement SDG 6 and thus ensure a universal and equitable access to water.

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Abbreviations

APL	Above Poverty Line
ASHA	Accredited Social Health Activist
BPL	Below Poverty Line
BIS	Bureau of Indian Standards
CBO	Community-based organisation
CESC	UN Committee on Economic, Social and Cultural Rights
CGWB	Central Ground Water Board
CLTS	Community-Led Total Sanitation
CSC	Community Sanitary Complex
CSR	Corporate Social Responsibility
CWC	Central Water Commission
DDP	Desert Development Programme
DPAP	Drought Prone Areas Programme
DWSM	District Water and Sanitation Mission
GIS	Geographical Information System
GoI	Government of India
GP	Gram Panchayat
HADP	Hill Areas Development Programme
HRD	Human Resource Development
HRWS	Human Rights to Water and Sanitation
IAY	Indira Awas Yojana
IEC	Information, Education and Communication
IHHL	Individual Household Latrine
NGO	Non-governmental organisation
MGNREGS	Mahatma Gandhi National Rural Employment Guarantee Scheme
MHM	Menstrual Hygiene Management
MoDWS	Ministry of Drinking Water and Sanitation
NRHM	National Rural Health Mission
NRDWP	National Rural Drinking Water Programme
NBA	Nirmal Bharat Abhiyan
O&M	Operation and Maintenance
OBC	Other Backward Classes
ODF	Open Defecation Free
PHC	Primary Health Centre
PHED	Public Health Engineering Department
PPP	Public Private Partnership
PRI	Panchayati Raj Institution
R&D	Research and Development
RGNDWM	Rajiv Gandhi National Drinking Water Mission
SBM	Swachh Bharat Mission
SC	Scheduled Caste
SHG	Self Help Group
SLSSC	State Level Schemes Sanctioning Committee
SLWM	Solid and Liquid Waste Management
SSBM	State Swachh Bharat Mission
ST	Scheduled Tribe
STA	State Technical Agency

SWSM	State Water and Sanitation Mission
TSC	Total Sanitation Campaign
UNHRC	UN Human Rights Council
UT	Union Territory
VAP	Village Action Plan
VWSC	Village Water and Sanitation Committee
WASH	Water, Sanitation and Hygiene
WSSO	Water and Sanitation Support Organisation
WHO	World Health Organisation
WQM&S	Water Quality Monitoring & Surveillance

Units of measure

lpcd	litres per capita per day
m	metre
Rs.	Rupees

1. INTRODUCTION

Following great achievements in the progress of access to water and sanitation and improved facilities for its population in the frame of the Millennium Development Goal (MDG) 7c in 2015, the country of India is now embarking on the road to Sustainable Development Goal (SDG) 6 aiming to ensure access to water and sanitation for all by 2030. In particular, SDG 6 targets to achieve universal and equitable access to safe and affordable drinking water for all, as well as to achieve access to adequate and equitable sanitation and hygiene for all and end open defecation, paying special attention to the needs of women and girls and those in vulnerable situations.

To pursue these ambitious goals, India has to cope with several serious challenges pertaining to water. With 1544 m3 water availability per capita per year as per census 2011, the country is in a water-stressed situation. A more granular assessment reveals that about 16% of its territory is considered to be facing an over-exploited situation.[7] Low water-use efficiency, in particular in agricultural uses, pollution of freshwater sources through pesticides, industrial waste and untreated urban wastewater, are significantly contributing to the reduction of the availability of the resource for the needs of the population. The country already relies on only 4% of world's renewable water resources while it accounts for more than 18% of the world's population.[8] Climate change is increasingly causing variability in the availability of the resource that translates into more severe drought and flood patterns. Moreover, the great thrust in infrastructure development triggered by MDG 7c now requires an improved effort in maintenance performance in order to avoid losing the investments and its related outcomes in terms of access to sufficient, safe and affordable water and sanitation services for all.

In tackling the sustainability challenges for both the water resource and the facilities ensuring service delivery, the issue of equitable access should be viewed as a goal in itself and consistently pursued. As acknowledged by the Government of India, growing conflicts among water users at village, district, State and national levels, as well as inter-sectoral competing demands and ecosystem sustainability requirements, may lead to social unrest.[9] If left unaddressed, inequalities may thus hamper efforts to establish sustainable development and management models.

In that regard, the human rights to water and sanitation are viewed as the most relevant framework to address inequalities. These rights achieved universal recognition through the 2010 UN General Assembly Resolution 64/292, supported by the State of India. In addition, the State of India has ratified several human rights treaties pertaining to these rights, namely the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities. Further, as emphasised in a key intervention in front

[7] National Institution for Transforming India (2017), Appraisal Document of Twelfth Five Year Plan 2012-17

[8] M/o Water Resources (2012), National Water Policy

[9] National Institution for Transforming India (2017), Appraisal Document of Twelfth Five Year Plan 2012-17

of the UN General Assembly in 2014, the Government of India stresses its priority is "to ensure sustained and inclusive socioeconomic development, with special attention to gender equity issues and the inclusion of vulnerable and marginalized sections of society in our development efforts."[10] In particular, the latter translated into the integration of a rights-based approach to food enshrined in the 2013 National Food Security Act.

Concerning water governance, however, the incorporation of the human rights to water and sanitation within the Indian legal framework still lacks an enacted legislation.[11] As per the Constitution of the Federal State of India, water is a State subject. The Union Government has attempted to bridge the legal gap by drafting the 2016 National Water Framework Bill and the 2016 Model Groundwater Act,[12] both of which recognise the human right to water. Yet these two instruments have not entered into force to date. Furthermore, there has been some reluctance to integrate human rights language within policy provisions of the drinking water sector.[13] In spite of these limitations, the Supreme Court and other judicial bodies of the State of India have been steadily issuing progressive interpretations of the rights to water and sanitation derived from the right to life, embodied in the Constitution. As a result, the rights to water and sanitation have achieved a legal recognisance in the country. Yet these rights still lack a comprehensive definition backed by a legal instrument[14] that would lead to mainstreaming them within the policy framework.

[10] UNGA (2014), Note verbale dated 16 October 2014 from the Permanent Mission of India to the United Nations addressed to the President of the General Assembly, A/69/538
[11] Cullet, P. (2013) Right to water in India – plugging conceptual and practical gaps, The International Journal of Human Rights, 17:1, 56-78
[12] Cullet, P. (2014). Groundwater law in India: towards a framework ensuring equitable access and aquifer protection. Journal of Environmental Law, 26(1), 55-81.
[13] Cullet, P. (2013) Right to water in India – plugging conceptual and practical gaps, The International Journal of Human Rights, 17:1, 56-78
[14] Ibid.

2. ORGANISATION OF THE STUDY

In order to contribute to the contribution of the human rights to water and sanitation for sustainable services in India, this study aims to assess the degree of inclusion of various components of these rights within the policy and guideline provisions pertaining to rural drinking water and sanitation. The focus of the study in rural areas is motivated by the disparities compared to urban areas characterised by differences in coverage of the level of services for water and sanitation.

Undertaking an analysis of the development sector from a human rights perspective is essentially about shifting the focus toward the position of the right holders, that is, any human being entitled to enjoy the respect and protection of his or her fundamental rights. Stemming from the setting of the development policies, this perspective features a pragmatic look at the various social, economic, environmental barriers that prevent individuals to be reached by the support of development agencies. Although this reasoning is to a great extent already contained in the shaping of public policies, the current water challenges and the dynamics of the devolution process introduce a level of complexity that may lead to the failure of a society in ensuring everyone's basic rights on a sustainable basis. Hence, the human rights framework is of major importance in two respects: First it provides a backdrop against which to evaluate the soundness and ethical grounds of public policies. Second, it empowers individuals to act as agent of change within the collective and participative effort to achieve the sustainable development goals.

The report is organised as follows: This Chapter briefly exposes the methodology of the study and how the information was processed through a desk review on the basis of the HRWS components, as well as the limitations of the study. Chapter 3 is the core of the present study and displays the integration of the various components of the rights in policy and guidelines provisions, as well as the gaps and challenges related to policy implementation. In order to get a more thorough briefing on the components of the HRWS, Annex 1 provides an overview on the various substantive criteria that compose the human rights to water and sanitation, as well as the various principles that govern its related procedural requirements. Annex 2 presents an introduction to the background of the Indian context of the water and sanitation sector by reviewing institutional arrangements, the devolution process and financial settings of the rural water and sanitation sector.

As the new framework agenda of the Sustainable Development Goals is swiftly shaping a new approach to development policies, it is hoped that this study will provide a timely input to reflect on the manner in which the human rights to water and sanitation may contribute to an enabling framework for achieving SDG 6 and thus to ensure a universal and equitable access to water.

2.1. Methodological approach

The WaterLex methodology for country mapping aims at establishing the state of implementation and monitoring of the human rights to water and sanitation in a specific State. It builds upon the 2002 General Comment n° 15 of the Committee on Economic, Social and Cultural Rights pertaining to the human right to water as well as other relevant documents produced by the UN system of protection of human rights in order to process an analysis consistent with a human rights based approach to development policies. Thus, the methodology provides a gap analysis that enables states to identify the existing provisions, their strengths and weaknesses with respect to their obligations to respect, protect and fulfil the human rights to water and sanitation.

The analytical work consists of a desk review of the main laws, policies and guidelines pertaining to rural water and sanitation sector. The review strives to identify the standards enacted for the implementation of development policies, to observe how they are aligned with human rights standards and to clarify how these are streamlined in a coherent division of roles and responsibilities. Furthermore, it gathers evidences to analyse to what extent the standards are upheld during implementation phase and consistently tracked down during monitoring phase. For this latter purpose, the analysis builds upon government reports, reports and recommendations provided by UN human rights protection mechanisms, as well as research produced by academic scholars and civil society organisations.

The outcomes of the methodology are two-fold: First it may help identify inconsistencies within the policy framework caused by the non-alignment between two or several official policy or guidelines documents, and to identify gaps in standards and their definition. Such discrepancies may introduce a lack of clarity on what constitutes the official reference. Secondly, it contributes to mapping the challenges associated with the implementation of standards that hamper the realisation of the HRWS.

The table below explains how the various components of the human rights to water and sanitation translate into practise. The table is broken down into the five criteria that compose the human rights to water and sanitation and into the five principles that govern these rights. The criteria – or substantive requirements - serve to determine whether enjoyment of the rights has been met. The principles - or procedural requirements – establish the guidelines and enabling framework that may lead to the achievement of the rights. Each criteria and principle is associated with a set of directives that may be transcribed within the organisation of the water and sanitation sector. Thus, the desk review proceeds on the basis of these categories in order to sort the information and enable the analysis.

Analytical Grid for the Incorporation of the HRWS in the Policy Framework
Criteria 1: Availability
• Planning facilities in view of sufficient services in terms of quantity.
• Prioritisation of personal and domestic use of water over other uses at point source.
• Organisation of water facilities enables continuous supply.
• Liquid waste management maintains sanitation facilities available.
• Consideration of coverage of public buildings (schools, health centres, etc).

Criteria 2: Physical Accessibility
• Planning location facilities within reasonable distances and in a way that ensure physical safety when accessed.
• Planning facilities that take due consideration of special features of their beneficiaries.
Criteria 3: Affordability
• Design and choice of facilities take into account reasonable ability to pay in case of contribution request with respect to capital expenditures.
• Operating schemes take into account reasonable ability to pay in case of user connection charges, consumption tariff, or other form of financial or in-kind contribution with respect to operational expenditure.
• Management of grid solutions devices for water and sewerage foresees a disconnection policy that takes into account reasonable ability to pay and the possibility to rely on alternative of water sources to ensure fundamental rights in case of disconnection.
Criteria 4: Quality and Safety
• Choice of location of water facilities combined with adequate treatment procedure must ensure the safety and quality of water for human consumption.
• A surveillance programme should be implemented to ensure safe water.
• In case water is not accessed within premises, households must be sensitised with hygiene practices and equipped with treatment solutions.
• Sanitation facilities should be constructed according to safety standards and equipped for cleansing as well as menstrual hygiene management.
Criteria 5: Acceptability
• Design of facilities takes into account cultural needs and preferences of users.
Principle 1: Non-discrimination and equality
• Policies, programmes and schemes ensure that no one is excluded in the framing of their objectives, during their implementation phase and when meeting their standards in a consistent way.
• Policies, programmes and schemes prioritise their support towards the most marginalised and potentially vulnerable populations through clear targets in view to reduce inequalities.
Principle 2: Access to information
• Relevant information regarding users' concerns is provided in a suitable language.
• Awareness and education campaign are reaching every beneficiaries in a suitable language.
Principle 3: Participation
• Active, free and meaningful participation is ensured during planning, implementation and monitoring phases of water or sanitation policies and projects.
Principle 4: Accountability

• All standards pertaining to human rights to water and sanitation are upheld through clear and relevant division of tasks and responsibilities both between line ministries and within the various tiers regarding the devolution process.
• Redress mechanisms are set for individuals and communities to challenge decisions in case standards are not duly applied in their view.
Principle 5: Sustainability
• Operation and maintenance systems for facilities are in place and functional to ensure continuous supply of services (institutional and economic sustainability)
• The water resources is protected through environmental standards and safeguards that ensure the viability of ecosystems in view of the rights of future generations (environmental sustainability)
• Prioritisation of personal and domestic use of water over other uses in the allocation of water resources at management level of watershed and aquifer
• Individuals whose access to water or sanitation facilities or to water resource is affected by any programme or project are consulted and free, prior and informed consent is duly observed.

2.2 Limitations of the study

The current report does not seek to provide a complete analysis of all existing laws, decrees, by-laws or other legal instruments issued by the federal or state legislatures of India. The scope of the study is limited to the national level, thus no laws, policies of States members of the Federal State of India have been reviewed in this work.

This research on the national policy framework, analyses only main drinking water and sanitation related policies at the federal level. Thorough examination of all policies and government schemes pertaining to water, sanitation, environment and special categories of the population is outside the scope of this study. In particular, the provisions pertaining to environmental sustainability and mechanisms related to environment and social impact assessments were not reviewed.

It should be noted that the review did not include all legislation and policies that could affect all groups of people separately, such as policies pertaining particularly to schools (for children's rights), or policies regarding access to water and sanitation facilities in detention centres (for civil and political rights).

As mentioned above, this study is intentionally focused on rural areas, although the human rights to water and sanitation framework apply to the whole territory of a given State, as defined by rural, urban and mixed areas.

3. HRWS PROVISIONS IN POLICIES AND GUIDELINES

3.1 Substantive requirements

3.1.1 Availability and Physical Accessibility

The HRWS demands that water and sanitation must be made available to everyone in the household or its immediate vicinity, in sufficient quantity and on a continuous basis, for personal and domestic use. Furthermore, the HRWS require that infrastructures are built and located in order to ensure the physical accessibility for all including for people with particular needs, bearing in mind the issues of time and distance, physical security of users and a suitable design of facilities.

To ensure a sufficient amount of water for personal and domestic use – especially where water is scarce – the use of water for personal and domestic use must be prioritised over other uses.

This requirement is formally met in the National Water Policy that states:

"Safe Water for drinking and sanitation should be considered as pre-emptive needs, followed by high priority allocation for other basic domestic needs (including needs of animals), achieving food security, supporting sustenance agriculture and minimum eco-system needs. Available water, after meeting the above needs, should be allocated in a manner to promote its conservation and efficient use."[15]

Moreover, the National Water Policy acknowledges the issue of limited water availability in a context of rapidly increasing water demand. To address this, the policy sets new additional strategies of utilisable water resources pertaining to direct use of rainfall, desalination and avoidance of inadvertent evapotranspiration.[16]

Likewise, the Strategy Plan 2011-2022 for rural water and sanitation reaffirms the primacy for rural drinking water in water resource allocation.[17] It calls upon States to review existing water resource allocations in cases of new demand on the basis of the general finding that primacy for drinking water is not given appropriate priority for surface water harvesting or water impounding projects. The strategy also contends that States should meet this requirement while reviewing water resources among competing user groups.

The requirement of primacy of drinking water over other uses is further de facto integrated in the national goal of the National Policy Framework for rural drinking aiming:

[15] M/o Water Resources (2012), National Water Policy, (vi)
[16] Ibid., 5.2
[17] M/o Rural Development, Department of Drinking Water and Sanitation (2011), Strategic Plan – 2011-2022: "Ensuring Drinking Water Security In Rural India", 5.1

"To provide every rural person with adequate safe water for drinking, cooking and other domestic basic needs on a sustainable basis. This basic requirement should meet minimum water quality standards and be readily and conveniently accessible at all times and in all situations."[18]

The National Policy Framework thus advises States to "adopt a 'Wise Management of Water' for the equitable use, management and allocation of water for domestic purpose which involves optimising the use of both conventional and non-conventional water resources and focuses on both 'water quality and water quantity' by providing solutions from the catchment to the consumer."

In view to address disaster preparedness, NRDWP also advocates States to set up water supply frameworks relying on different drinking water sources accessible in different situations and different points of time.

Official Standards

The Indian policy framework for rural drinking water follows an evolving target framework in consistence with the aim of continuous improvement of service delivery. The related timeframe is encapsulated in the Strategic Plan 2011-2022 for rural drinking water that establishes the following long term goal:

"By 2022, every rural person in the country will have access to 70 lpcd within their household premises or at a horizontal or vertical distance of not more than 50 meters from their household without barriers of social or financial discrimination. Individual States can adopt higher quantity norms, such as 100 lpcd."[19]

The strategy further specifies that States will adopt their own timeframes to achieve this goal based on the evolving development of the three standards of service:

- Household connections of piped water schemes (designed for 70 lpcd or more)
- Basic piped water supply with a mix of household connections, public taps and handpumps (designed for 55 lpcd)
- A standard pertaining to extreme cases with facilities designed for 40 lpcd, such as handpumps, protected open wells, protected ponds, etc., supplemented by other local sources.

In addition, optimum use of rainwater should be integrated in all three cases.

With this aim in view, the strategy sets timelines for 2017 and 2022 for the evolution of coverage with respect to these three standards for services. [20] Thus, target 2017 aims to:

"Ensure that at least 55% of rural households are provided with piped water supply; at least 35% of rural households have piped water supply with a household connection; less than 20% use public taps and less than 45% use handpumps or other safe and adequate private water

[18] M/o Drinking Water and Sanitation (2013), National Rural Drinking Water Programme: Movement towards ensuring people's Drinking Water Security in Rural India, Guidelines 2013
[19] M/o Rural Development, Department of Drinking Water and Sanitation (2011), Strategic Plan – 2011-2022: "Ensuring Drinking Water Security In Rural India"
[20] Ibid.

sources. All services meet set standards in terms of quality and number of hours of supply every day".

As for target 2022, the aim is to:

"Ensure that at least 90% of rural households are provided with piped water supply; at least 80% of rural households have piped water supply with a household connection; less than 10% use public taps and less than 10% use handpumps or other safe and adequate private water sources".

Furthermore, the Twelfth Five Year Plan issued by the erstwhile Planning Commission proposed that an interim measure of the long-term 70 lpcd be set at 55 lcpd for the NRDWP during the period 2012-2017.[21] The clarification of this interim step was set in order to initiate the paradigm shift towards piped water supply and move from the standard of 40 lcpd in force since the inception of the rural drinking water programme in 1972 that led to the predominance of handpumps in the choice of water facilities.[22]

Accordingly, the NRDWP incorporates the standards of **basic minimum level** at 40 lpcd and of **minimum level** at 55 lcpd. The water provisions for the latter standard breaks down as follows[23]:

Purpose	*Quantity (lpcd)*
Drinking	3
Cooking	5
Bathing	15
Washing utensils and house	10
Ablution/Toilets	10
Washing of Clothes and other uses	12
Total	**55**

This norm on water availability specifies that - for comparability purposes - valid coverage means water provision within a distance of 100 meters from the household or 30 minutes of time taken for fetching water in a day. Besides, as reflected in the section below on water quality, NRDWP considers there is no distinction between habitations not covered due to quality or quantity aspects. Thus water quality affected habitations should not be taken into account when reporting on habitations covered by water supply. Moreover, since the NRWDP aims to ensure water supply at household level, the monitoring requirement sets out that habitations failing to provide each of their households with basic minimum level of drinking water facility of potable quality at a convenient location on a sustainable basis would be considered as uncovered or partially covered.[24] This focus step carries on a progressively accurate monitoring process that already shifted the monitoring unit from village to habitation in 1996.

[21] Planning Commission (2013), Twelfth Five Year Plan Document Vol. II page 301
[22] M/o Drinking Water and Sanitation (2013), National Rural Drinking Water Programme: Movement towards ensuring people's Drinking Water Security in Rural India, Guidelines 2013
[23] Ibid. Annexure 1
[24] Ibid.

However, lack of clarity remains as to the transition from basic minimum level to minimum level. Although this may partly be related to the community-based demand approach, which recommends that desirable service level should be decided in consultation with the community based on their needs to suit local requirement,[25] the national timeframe itself contains inconsistencies regarding the validation steps of this transition. These were present at the outset of the planning period. Whereas the Twelfth Five Year Plan sets the following goal:

"By 2017, it is targeted that at least 50 per cent of rural population in the country (as against 35 per cent today) will have access to 40 lpcd piped water supply within their household premises or within 100 metres radius (and within 10 metres elevation in hilly areas) from their households without barriers of social or financial discrimination"[26];

The 2013 NRDWP reinterprets this goal referring the to Twelfth Five Year Plan as follows:

"providing at least 50% of the rural population with at least 55 lpcd within the household premises or at a horizontal or vertical distance of not more than 100 metres from their household without barriers of social or financial discrimination". [27]

Hence, albeit the Twelve Year Plan refers to an interim measure of 55 lpcd as mentioned above, there are mismatches in the 2017 timeline goal pertaining both to the availability standard and, regarding hilly areas, to the physical accessibility standard.

Furthermore, this time-related double standard creates confusion as to what criteria should be met for a habitation to be considered as fully covered, since the monitoring system of the MoDWS keeps a double reporting records as for 40 lpcd and for 55 lpcd, which both display a "fully covered" category.[28] Thus, it remains unclear if and when the Centre Government will initiate a shift to officially recognise 40 lpcd as the standard solely pertaining to the context of extreme cases, as agreed upon in the Strategic Plan 2011-2022. One of the latest government report offers no insight on that matter, as it merely refers to the 40 lpcd related records in order to account for the fact that 77% of rural habitations in India have achieved fully covered status.[29]

Rural Sanitation

Regarding the rural sanitation programme, the community-led total sanitation approach adopted by the Centre Government aims to cover each household with its own toilet following a saturation approach. Furthermore, the Swachh Bharat Mission guidelines foresee the option of building a Community Sanitary Complex in case there is lack of space in the village for individual household toilets.[30] While the guidelines describe Community Sanitary Complexes as comprising "an appropriate number of toilet seats, bathing cubicles, washing platforms,

[25] Ibid.
[26] Planning Commission (2013), Twelfth Five Year Plan Document Vol. II page 301
[27] M/o Drinking Water and Sanitation (2013), National Rural Drinking Water Programme: Movement towards ensuring people's Drinking Water Security in Rural India, Guidelines 2013
[28] http://indiawater.gov.in/IMISReports/Reports/Physical/rpt_RWS_TargetAchievement_S.aspx?Rep=0&RP=Y&APP=IMIS Consulted September the 25th 2017.
[29] M/o Drinking Water and Sanitation (2017), Swachh Bharat Mission and NRDWP: 3 Years of Good Governance
[30] M/o Drinking Water and Sanitation (2014), Guidelines for Swachh Bharat Mission (Gramin)

wash basins, etc.", they do not set up a specific ratio of toilet seats per users to comply with as a standard. SBM guidelines however refers to the 2011 handbook on Community Sanitary Complexes, which suggests 40 users per seat per day to be followed as the optimum ratio when designing facilities.[31] The latter also recommends a ratio of men with respect to women seats to be set at 1:1.5.

Additionally, under the SBM, provision of sanitary facilities sensitive to the needs of people with disabilities should be included in the technologies that may be used for the construction of toilets with suggestive models and costs estimates.[32] For this matter, MoDWS has produced a handbook on accessible household sanitation for Persons with Disabilities. [33]

Public Facilities

As set out in the NRDWP, drinking water is to be provided "to every public place, including school, anganwadi, public building, PRI office, community halls, markets, temples, other religious institutions, market places, mela ground, cremation ground, etc."[34]

The programme foresees to work in convergence with the education programme Sarva Shiksha Abhiyan (SSA) by setting the respective tasks to cover existing public schools under the NRDWP and to cover new schools under SSA[35] As for private schools, water supply should be ensured by the Education Department on the basis of the enforcement of the provisions of the Right to Education Act.[36] The NRDWP imposes the goal to provide water facilities remaining Government rural schools and Anganwadis (located in Government / public/ community buildings) by the end of 2012-13.[37] It further requires States to fix targets for coverage of rural schools and report achievements online to the MoDWS on a monthly basis by compiling data from the State Education Department and Women and Child Development Department. The programme also caters for water purification systems to address schools and Anganwadis with drinking water sources affected by bacteriological or excess iron contamination.

In terms of sanitation in public facilities, the SBM guidelines suggest to revert to the Community Sanitary Complexes option for public places, markets, bus stands etc., where large congregation of people takes place. The 2017 Gender Guidelines further specify that public toilet design should ensure safe and private entrance for women's toilets with ample lightning after evening hours, and that the location of the toilet should be made in an gender inclusive participatory process.[38]

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[31] M/o Rural Development, Department of Drinking Water and Sanitation (2011), A Handbook on Establishment and Management of Community Sanitary Complexes in Rural Areas, Water and Sanitation Program (WSP)

[32] M/o Drinking Water and Sanitation (2014), Guidelines for Swachh Bharat Mission (Gramin)

[33] M/o Drinking Water and Sanitation (2016), Handbook on Accessible Household Sanitation Facilities for Persons with Disabilities

[34] M/o Drinking Water and Sanitation (2013), National Rural Drinking Water Programme: Movement towards ensuring people's Drinking Water Security in Rural India, Guidelines 2013

[35] M/o Rural Development, Department of Drinking Water and Sanitation (2011), Strategic Plan – 2011-2022: "Ensuring Drinking Water Security In Rural India"

[36] Ibid.

[37] M/o Drinking Water and Sanitation (2013), National Rural Drinking Water Programme: Movement towards ensuring people's Drinking Water Security in Rural India, Guidelines 2013

[38] M/o Drinking Water and Sanitation (2017), Guidelines on Gender Issues in Sanitation

As reflected above, it should be noted that there are no official standards to comply with, that would clarify the ratio pertaining to the potential of water and sanitation and their users in order to ensure the availability criteria of the HRWS. In particular, schools and angawandis would benefit of having determined water quantities and toilets per sex incorporated in a standard ratio respectively by pupils and by health center beds in order to best defined when these public institutions may be considered as covered.

3.1.2 Affordability

The criteria of affordability requires States to ensure that the costs of water and sanitation services charged to the households are set within a reasonable proportion of their monthly disposable income in order to ensure its access while maintaining affordability of other basic services protected by human rights law. While assessing the costs related to these services, the Special Rapporteur on the human rights to water and sanitation recommended that all forms of household contributions be taken into account,[39] e.g. both direct and indirect costs. Thus, in case water is not supplied into the premise, water treatment and conservation costs borne by households should also be accounted for. Although international organisations do not have a common position on the required threshold standard, it is acknowledged that water and sanitation costs, including hygiene, that exceed 5% of the household disposable income should be consider as unaffordable.[40]

In a framework that devolves ownership and management of facilities to local governments or communities, setting the financial contributions of households is directly related to the choice of technology options and their related operation and maintenance systems. Hence this choice should be undertaken with due consultation of the beneficiaries in order to tailor the design of infrastructures to their needs and their financial capacities. In doing so, the most challenging component of the assessment is to distinguish between the ability to pay from the willingness to pay, since human rights law protects households that do not have the financial capacities but not those who lack willingness to pay. This assessment may prove difficult to implement in rural areas and informal settlement zones both characterised by high level of informal economy. When requesting information on affordability, communities might under-value their income to be charged on lower costs or over-value their income to get access to a highest standard of technology. Even though the concept of climbing up the ladder of delivery services calls for a variety of technology options, low level of income from disadvantaged communities should however not result in overlooking the compliance with the basic level of services for water and sanitation. Whenever required, states should hence consider subsidies through financial transfers, taxes or cross-subsidies tariff structure to ensure the provision of water and sanitation services to the most vulnerable and marginalised groups. Further, in case the users' financial capacities do not meet the total costs, this requirement could in practise amount to a departure from the principle of "water pays water" or full cost recovery – that is ensuring all costs related to capital and operational expenditures be funded through users charges. In any event, the guiding principle for setting affordability policies is that a mistake of inclusion is far more preferable than a mistake of exclusion from the perspective of human rights, public health and long term economic development.[41]

[39] United Nations (2011), Report of the Special Rapporteur on the human right to safe drinking water and sanitation to the 66th sessions of the General Assembly, A/66/255
[40] Guy Hutton (2012), Monitoring "Affordability" of water and sanitation services after 2015: Review of global indicator options : p. 15
[41] UN-HABITAT, SDC, AAAS, and COHRE (2008), Manual on the right to water and sanitation: p. 144

Affordability Principle in Policies

Provisions on affordability is integrated at a general level in the policy framework of the drinking water and sanitation sector in India. As mentioned in the above section, when presenting the three level of services, the Strategic Plan for rural drinking water 2011-2022 explicitly incorporates the requirement of "taking affordability and social equity into consideration" for the minimum level service and above. [42] It also advises that the basic minimum level of services pertaining to extreme cases be provided "preferable free of cost". Further, the Strategic Plan requires States to "establish O&M policy on service standards and user charges with appropriate subsidies and protecting the supply of basic needs without any financial constraints."

Similarly, the National Policy Framework for rural drinking water includes the following statements in the frame of its basic principles:

- "The ethic of fulfilment of drinking water needs to all should not be commercialized and denied to those who cannot afford to pay for such service.
- Drinking water supply cannot be left to the market forces alone. The importance of providing livelihood supply to all and its vital linkage with the health of the people must be recognized.
- As such, the emphasis is more on Public-Public Partnership (such as between Gram Panchayat and PHED for in-village distribution of drinking water) rather than commercialization of drinking water supply by private agencies.
- User charges of the water supply system should have an in-built component of cross-subsidy to ensure that the economically backward groups are not deprived of this basic minimum need."[43]

As regard water pricing, the National Water Policy sets out guiding principles aiming to meet the triple requirements of enabling equitable access while ensuring financial sustainability of facilities and environmental sustainability of ecosystems:[44]

"Pricing of water should ensure its efficient use and reward conservation. Equitable access to water for all and its fair pricing, for drinking and other uses such as sanitation, agricultural and industrial, should be arrived at through independent statutory Water Regulatory Authority, set up by each State, after wide ranging consultation with all stakeholders".

"In order to meet equity, efficiency and economic principles, the water charges should preferably / as a rule be determined on volumetric basis. Such charges should be reviewed periodically."

"The principle of differential pricing may be retained for the pre-emptive uses of water for drinking and sanitation; and high priority allocation for ensuring food security and supporting livelihood for the poor. Available water, after meeting the above needs, should increasingly

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[42] M/o Rural Development, Department of Drinking Water and Sanitation (2011), Strategic Plan – 2011-2022: "Ensuring Drinking Water Security In Rural India"

[43] M/o Drinking Water and Sanitation (2013), National Rural Drinking Water Programme: Movement towards ensuring people's Drinking Water Security in Rural India, Guidelines 2013

[44] M/o Water Resources (2012), National Water Policy, Chap. 7

be subjected to allocation and pricing on economic principles so that water is not wasted in unnecessary uses and could be utilized more gainfully."

Notwithstanding, the NRDWP points out some issues pertaining to pricing for rural drinking water. The programme stresses that the trend by States of outsourcing water supply, water treatment and wastewater management to the private sector or NGOs should be framed by pricing policies.[45] Further, the NRDWP reiterates this recommendation with respect to the relation between the setting of bulk water utilities at various level and the GPs responsible for the distribution of water at the local level. In particular, it raises awareness on the impact of subsidised electricity cost on water pricing, which is not evenly implemented among States. Finally, the NRDWP stresses the issue of poor cost recovery due to under-evaluated tariff levels and insufficient collection of user charges that threatens the financial sustainability of operation and maintenance of utilities.

As regard tariff structure setting for rural drinking water then, instructions may be found in several guidelines that, while putting forth cross-subsidy principle, do not refer to identical categories of people.

Thus, the NRDWP advocates tariff setting should take into consideration the "differential connection charges and tariff structure for house connection and supply through handpumps/ street stand post and lower/ affordable tariff" for Scheduled Castes, Schedules Tribes, Other Backward Classes and Below Poverty Line households. [46]

In his handbook on drinking water management produced for PRIs, the Ministry of Panchayati Raj categorises consumers in three categories, namely: households collecting water through stand posts associated with poor people, consumers with individual connections and commercial and institutional connections.[47] The handbook instructs that a minimum tariff may be collected for the first category, with due consideration "to the needy such as BPL (Below Poverty Line household), etc." It further states that higher tariff than households may be charged for the third category. The second category is subsequently deducted following the balance from the O&M expenditure and revenues from first and third categories.

Further, the manual on operation and maintenance published by the MoDWS phrases consumers categorisation differently. Domestic users are the "privileged class of people in terms of supply of water and of consumer's collection of taxes mainly because they use water for their healthy existence".[48] They are defined in opposition to other categories of consumers encompassing commercial and institution consumers usually charged with higher tariff. Guidelines advises then tariff setting should be processed by distribution of costs on each class of consumers including "un-privileged people". The manual goes on by displaying the following water charges methods and specifies that charge for BPL may be determined separately:

> "1. Metered consumption of water.
> 2. Non-Metered System:

[45] M/o Drinking Water and Sanitation (2013), National Rural Drinking Water Programme: Movement towards ensuring people's Drinking Water Security in Rural India, Guidelines 2013
[46] Ibid.
[47] M/o Panchayati Raj (2014), Drinking Water in Gram Panchayats, Active Book
[48] M/o Drinking Water and Sanitation (2013), Operation and Maintenance Manual for Rural Water Supplies

- Fixed charge per house per month (depending upon the size of the house) or per connection per month or
- Fixed charge per family per month or per tap per month/per house or
- Percentage of rateable value of the property"

However, the Fourteenth Finance Commission made the recommendation in 2015[49] that "States should progressively move toward 100 per cent metering of individual drinking water connections to households, commercial establishments as well as institutions" both for rural and urban areas. This is based on the statement that volumetric pricing is beneficial for water conservation, to tackle non-revenue water and to enable targeted water subsidies to the poor. It further instructs to meter all individual connections in the country by March 2017, to henceforth condition new connections to the setting of metering system and that related cost be borne by consumers. Regarding community taps supplying poorer sections of population, the Commission also advises the metering of water consumed as it "would ensure efficient supply". The statement does not explicit how this measure would also serve equitable aspects though.

A part from costs related to consumption, sector guidelines also foresee a household contribution to capital expenditure for the construction of facilities. This was initially implemented through the community-based management reform and demand-led approach introduced with the 2002 Swajaldhara guidelines.[50] The latter fixed community contribution to respectively 10% for facilities designed for 40 lpcd and 20% for facilities designed for 55 lpcd. Contributions should be provided at least at 50% in cash, the alternative being in the form of in-kind, labour or land. Yet, following a series of issues regarding in particular exclusion of poorer community members from accessing water schemes,[51] the former Department of Drinking Water and Sanitation of the Minister of Rural Development issued an amendment in 2006 stating that contribution could be in any form without a proportion in cash in the case of villages where scheduled castes and scheduled tribes constituted more than half of all habitations. With respect to the NRDWP that superseded the Swajaldhara guidelines, community contribution requirements are still mentioned though as an optional feature.[52] However, the programme has been designed on the financial assumption of a community contribution of 6% in view to cover 90% of the rural population with piped water system.[53] NRDWP further requires that projects submitted for funding by external support agencies should include "a strong component for institutionalising community-based demand driven Rural Water Supply Programme with cost sharing by the communities."[54].

Regarding individual connection fees for piped water system – one significant contribution to capital costs, the National Institution for Transforming India has pinpointed the issue of the

[49] Finance Commission India (2015), Report of the Fourteenth Finance Commission
[50] M/o Rural Development, Department of Drinking Water and Sanitation (2002), Guidelines on Swajaldhara
[51] See Cullet, P. (2009). New policy framework for rural drinking water supply: Swajaldhara guidelines. Economic and Political Weekly, 47-54
[52] "GPWSC/VWSC will be responsible for (…) organising community contributions towards capital costs, both in cash and kind (land, labour or materials), **if any**." in M/o Drinking Water and Sanitation (2013), National Rural Drinking Water Programme: Movement towards ensuring people's Drinking Water Security in Rural India, Guidelines 2013, p. 86
[53] M/o Rural Development, Department of Drinking Water and Sanitation (2011), Strategic Plan – 2011-2022: "Ensuring Drinking Water Security In Rural India
[54] M/o Drinking Water and Sanitation (2013), National Rural Drinking Water Programme: Movement towards ensuring people's Drinking Water Security in Rural India, Guidelines 2013

major reluctance by households to take regular connection and pay water charges, preferring to depend on public stand-posts. It hence recommends that "either connection charges may be abolished or States may demand the connection charges in equal instalments over a period of 36-48 months, along with the monthly user charges".[55] Furthermore, there is no disconnection policy on the basis of failure to payment that may display under what condition a disconnection may be processed in order to assess if the safeguards of the human right to water be met. The MoDWS manual on operation and maintenance merely advocates for penalty or interest cost in the event of delayed payments.[56] Yet this constitutes a key issue with respect to the sector shift toward piped water systems. It is further an issue that touches upon electricity disconnection policy in case community-managed water facilities are cut off from an energy grid for failure of payment of electricity bills.[57]

As a whole, it remains unclear to what extent and under what conditions the capital expenditures should be borne by consumers within national policy framework. Whether on the issue of contributing to financial provisions to renew tangible assets – since the Finance Commission defines sustainable drinking water systems as those covering at least O&M expenditures,[58] or on the issue of contribution to the development of existing or new infrastructures. This makes it more difficult to appreciate what mechanisms are in place to evaluate affordability safeguards.

Responsibilities in water pricing

Enforcing the principle of affordability further depends on the clarity of the division of roles for water pricing and their related oversight mechanisms. In this matter, given the magnitude of the issue of water stress regions, the Indian water framework foresees the set up of long distance piped-infrastructures to deliver bulk water. These schemes divide between utilities for bulk water production, bulk water distribution and in-village management, which all required O&M systems.[59] Accordingly, for pricing mechanisms to integrate the various level of services, the policy framework should designate a coordination role with a clear mandate for water pricing.

At the local level, all guidelines align to vest Gram Sabha with the responsibilities to decide user fee charges, connection fees, subsidies or concessions provided to ST, SC and BPL households and organise social audit processes.[60] The GP/VWSC are responsible to collect user charges.

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[55] National Institution for Transforming India (2017), Appraisal Document of Twelfth Five Year Plan 2012-17

[56] M/o Drinking Water and Sanitation (2013), Operation and Maintenance Manual for Rural Water Supplies

[57] Cullet, P. (2009). New policy framework for rural drinking water supply: Swajaldhara guidelines. Economic and Political Weekly, 47-54

[58] Finance Commission India (2015), Report of the Fourteenth Finance Commission

[59] M/o Rural Development, Department of Drinking Water and Sanitation (2011), Strategic Plan – 2011-2022: "Ensuring Drinking Water Security In Rural India

[60] M/o Rural Development, Department of Drinking Water and Sanitation (2011), Strategic Plan – 2011-2022: "Ensuring Drinking Water Security In Rural India"; M/o Drinking Water and Sanitation (2013), National Rural Drinking Water Programme: Movement towards ensuring people's Drinking Water Security in Rural India, Guidelines 2013; M/o Panchayati Raj (2014), Drinking Water in Gram Panchayats, Active Book

The framework is less straightforward at a higher level though. As stated above, the National Water Policy stipulates statutory Water Regulatory Authority should be set by States to carry out water pricing after broad stakeholders consultation. A provision that is furthermore being resisted given that the Fourteenth Commission has reiterated the recommendation of the Thirteenth Commission to urge States that still do not have such bodies to act in this matter and that those established be made fully functional at the earliest, so that the pricing of water for domestic, irrigation and other uses can be determined independently and in a judicious manner.[61] As regard empowered regulatory authorities in place, the configuration of their mandate impedes to a certain extent these bodies to address environmental and social aspects in an independent manner.[62]

While referring to bulk water management, the Strategic Plan for rural drinking water states it in a more open-ended manner by indicating that tariffs should be set by "State government/PRIs/water resources regulator."[63] However, unlike the National Water Policy, the NRWDP vests the State Water and Sanitation Mission (SWSM) with the responsibility to deal with pricing with respect to collaboration between bulk water utilities and PRIs, and to decide tariff structure for water supply services.[64]

Hence the articulation of pricing mechanisms at various levels is not clearly delineated in the national framework. This raises the question for instance on how a village depending on bulk water distribution for water stress purposes may ensure cross-subsidy schemes if the balance between higher tariff and subsidised tariff cannot be met within their constituency. Another issue to be dealt with is the accountability lines in case the principle of affordability is not respected at GP level. The Strategic Plan for rural drinking water[65] foresees a role for DWSM and SWSM to set up grievance mechanisms to ensure economic regulation, a function that is not listed in their tasks regarding the NRDWP.[66]

Rural Sanitation

The Indian rural sanitation programmes based on the demand-driven approach has integrated several provisions to deal with affordability issues since the 1999 Total Sanitation Campaign. This is a progressive approach with respect to other community-led total sanitation methodologies that adopt a zero subsidy policy on the basis of the rationale that it would better incentivised communities to construct their toilet to achieve ODF status.

As regard the current Swachh Bharat Mission, the guidelines strategy to address affordability relies on flexible technology options, financial incentives and low-cost loans.

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[61] Finance Commission India (2015), Report of the Fourteenth Finance Commission

[62] For further analysis, see: Koonan S. & Bhullar, L. (2012): Water Regulatory Authorities in India: The Way Forward?, Environmental Law Research Society

[63] M/o Rural Development, Department of Drinking Water and Sanitation (2011), Strategic Plan – 2011-2022: "Ensuring Drinking Water Security In Rural India"

[64] M/o Drinking Water and Sanitation (2013), National Rural Drinking Water Programme: Movement towards ensuring people's Drinking Water Security in Rural India, Guidelines 2013

[65] M/o Rural Development, Department of Drinking Water and Sanitation (2011), Strategic Plan – 2011-2022: "Ensuring Drinking Water Security In Rural India"

[66] M/o Drinking Water and Sanitation (2013), National Rural Drinking Water Programme: Movement towards ensuring people's Drinking Water Security in Rural India, Guidelines 2013

As regard technology options, the guidelines foresee a built-in flexibility in the menu of options to "give the poor and the disadvantaged families an opportunity for subsequent upgradation of their toilets depending upon their requirements and financial condition."[67] Further, SBM entails a technological research component that should aim in particular for more affordable and environmentally safe facilities.

The provision of financial incentives is of Rs. 12'000 for the construction of an individual household latrine (IHHL). It targets specifically "all Below Poverty Line (BPL) Households and Above Poverty Line (APL) households restricted to SCs/STs, small and marginal farmers, landless labourers with homestead, physically handicapped and women headed households."[68] The guidelines add that beneficiaries should be encouraged to contribute to the construction of the latrine to promote ownership. States may provide higher incentives on their own funding.

The guidelines state that States have a flexibility regarding the utilisation of the incentive, that may be given to individual or community, in case the community model is adopted to trigger demand and maximise coverage or a combination of both. The incentive may be provided in cash, in materials or in voucher credits. Regarding the timing of payment, States may decide to provide incentives to households whether at the outset of construction or in two phases, one at the pre-construction stage and the other on completion of construction and usage. Yet, the guidelines require community incentive, if any, to be released after the village unit is open defecation free for a significant length of time.

With respect to the latter model, the affordability principle begs the question on the safeguards in place to ensure poorer members of a community are provided with funds if the incentive is given to higher community representatives. At a more general level, the guidelines do not make it clear to what extent these flexible features for States render the effective targeting with funds of eligible populations compulsory.

For Above the Poverty Line households not covered by incentives, SBM guidelines inform to motivate and trigger the demand in order to build toilets on their own. Yet for APL households facing financial issues, the guidelines foresee an assistance through low cost financing from the National Bank for Agriculture and Rural Development, banks and financial institutions. Alternatively, assistance may be provided with a Revolving Funds mechanism set at district level for providing cheap finance for toilet construction through loans recoverable in 12 to 18 instalments. Precise terms and conditions of this mechanism are to be determined by States with the option to outsource implementation to organisations or groups with suitable credit-worthiness records.The mechanism may be used by households benefiting other sanitation schemes or the SBM financial incentives in order to meet the additional cost of improved toilets with bathing facility. Besides, SBM encourages to explore the development of microfinance arrangements to facilitate convergence of financial resources, management skills and outreach capabilities. States and Districts are also encouraged to access credit at the local level whether on convergence with SBM or not.

With respect to the construction of toilets, SBM guidelines instruct that "activities should be taken up by the individual beneficiaries themselves with support from/or through agencies in

[67] M/o Drinking Water and Sanitation (2014), Guidelines for Swachh Bharat Mission (Gramin); See also section below on Non-discriminiation and Equality
[68] Ibid.

the village."[69] The supervision of construction is the responsibility of the Block Programme Management Unit, situated at Block Panchayat level. This role is of major importance to avoid inadequate or unsustainable constructions that would cause the lost of investment and, in case of excreta-related contamination, other cost to address health and environmental issues.

When the context is not suitable for individual household latrine, SBM guidelines advocate for the construction of a Community Sanitary Complex. It foresees a financial support limited at Rs. 2 lakhs (Rs. 200'000) with a sharing ratio of 60:30:10 between Central Government, State Government and the community. The guidelines specify though that community contribution "can be made by the Panchayat out of its own resources, from grants of the Finance Commission, from any other fund of the State duly permitted by it, or from any other source as obtained from the State, District or GP."[70] The GP owns the ultimate responsibility for O&M and may request "a reasonable monthly user charge for cleaning & maintenance" in case the facility is specifically meant for household use. SBM guidelines also suggest the option of a pay and use model for complexes in places of community congregation.The Guidelines on Gender Issues on Sanitation specify that any user fee for public or community toilet should be considered with a concession for senior citizens, children, differently-abled persons in order to encourage them to avail to these services.[71]

In conclusion, albeit the principle of affordability principle may be found at a general level of the drinking water and sanitation policy framework, there are still many issues to clarify. The first of all relates to the lack of a human rights framework[72] as the affordability is presented as an ethical principle rather then alegal requisite. Although this is an issue logically common to all the provisions related to substantive requirements presented in this study as regard their enforcement, affordability issues differ in the sense that they are not backed by norms and standards.[73] Thus, there is no defined threshold value that may objectively guide the criteria of affordability. Affordability provisions are set up on the basis of the long-term cycle classification pertaining to the Socio Economic and Caste Census. In the absence of an independent regulator with full capacities, the implementation system relies on the good will and appreciation of authorities in charge of pricing and user charges collectors to trigger affordability safeguards. Yet, with respect to water, the guidelines do display variation in the designation of the categories of population eligible for subsidies. Although part of national policy framework is designed to allow States for some flexibility, this comes together with a degree of unpredictability as to how the interests of households facing affordability issues may be protected. In particular, the assessment of the affordability requires a strong coordinated approach to encompass the water, sanitation and hygiene costs at household level, topped up with energy cost in case a collectivity of users is directly managing a drinking water supply facility.

The monitoring of affordability issues can further be considered as one of the most challenging aspects of the SDG 6 framework. The fact that an individual has access to an improved and safely managed facility may indeed hinder the fact that he may be paying an unreasonable

[69] Ibid.

[70] Ibid.

[71] M/o Drinking Water and Sanitation (2017), Guidelines on Gender Issues in Sanitation

[72] Cullet, P. (2013) Right to water in India – plugging conceptual and practical gaps, The International Journal of Human Rights, 17:1, 56-78

[73] Although as exposed in this study, there are concerns with the clarity of the norms and standards for physical accessibility, availability, quality and safety. Acceptability pertains de facto to a subjective assessment of the right holders.

amount to maintain access, which would enable a human rights violation to go undetected. In view of the objective of moving households up the ladder of delivery services, as reflected in the previous section, the Centre and State governments should thus take into consideration the set up of affordability safeguards, in particular against arbitrary disconnection, to avail a 55 lpcd minimum and further on 70 lpcd standard for all.

3.1.3 Quality, Safety and Acceptability

As regards the HRWS, states should develop and implement water quality standards that must be enforced and monitored. These may entail provision to ensure acceptability of services by users though the criteria of acceptability which implies that they should be provisions for community consultation on this matter in guidelines pertaining to software activities. While WHO guidelines on water quality may provide guidance, states should always consider national and local situations to guarantee relevant standards. States must also bear in mind that minimum standards may fail to meet individual's particular needs, such as for persons that are particularly vulnerable to infections, and must therefore never be used as absolute standards. Also, the obligation to progressively realise the rights requires standards to improve over time.

States must take positive measures to ensure hygiene promotion and education to all, and to take positive measures to monitor water quality standards, tackle water pollution and ensure compliance with national wastewater purification regulations, especially for drinking water suppliers.

With respect to the surveillance framework pertaining to water quality, it is important to adopt an integrated approach covering water catchment, storage and transport/transmission that should all foresee protective measures. In that respect, water connection into premises differs from other improved water sources, such as stand-alone household water systems, community non-grid water scheme and public stand post, as it integrates de facto these aspects under the management of the water suppliers. Whereas for water not provided directly in dwellings, the transport and storage is implemented by the water users. Yet it is often those two steps that are characterised by a greater risk of water contamination. Given that it primarily affects the most marginalised and vulnerable groups, states should address these specific situations in priority and implement a strong coordinated approach between different line ministries to thoroughly address the safe water chain. Moreover, the water quality should not only be addressed from the point of intake but more generally at the level of the protection and conservation of the water resource in order to ensure sustainability both in terms of quantity and quality.

Official Standards

Regarding the sector in India, water is defined as safe if it is free from biological contamination (guinea worm, cholera, typhoid etc.) and within permissible limits of chemical contamination (excess fluoride, brackishness, iron, arsenic, nitrates, etc.) as per IS-10500 standard of Bureau

of Indian Standards as revised in 2012.[74] The standard encompasses two distinctive threshold limits referred to as "maximum permissible or cause rejection limits" and the more stringent threshold of "desirable limits".[75]

In terms of acceptability, this standard states that odour and smell must be assessed as "agreeable" [76] with respect to a defined rating methodology. [77]

Implementation of Standards

According to the Rural Drinking Water Strategy Plan 2011-2022, the ministry in charge of rural drinking water should coordinate with State governments and appropriate national agencies in order to "make national water quality standards mandatory in a phased manner."[78] The strategic plan further specifies that this involves strengthening existing legislations and issuing necessary guidelines to the service providers. Yet, these provisions have not been implemented hitherto, whence the persistence of a legal gap with respect to the setting of binding drinking water quality standards to which water suppliers should comply throughout the country.[79] An analysis of water quality standards at state level points out that criterion retained in legal framework are often highly discretionary, suffer a lack of scoping and meaning and usually contain exception of application, such as "reasonable costs". The only authoritative prescription of the Centre government recommends as "highly desirable" that all States and UTs supply drinking water meet the quality constituents within the cause for rejection limits of IS-10500 standard and graduate steadily to the desirable limits.[8081]

As regard the policy framework, the 2012 National Water Policy establishes among its basic principles that "water quality and quantity are interlinked and need to be managed in an integrated manner, consistent with broader environmental management approaches" (…). [82]. In accordance, the approach of drinking water safety planning has been developed in the sector with the aim to ensure source protection through the coordination of rural sanitation, solid and liquid management, control and treatment of industrial effluents and sensitisation to agricultural pollutants.[83] The rationale of the water safety planning is to adopt a "risk assessment and risk management approach that encompasses all steps in water supply from catchment to user."[84] This approach establishes health based target for using groundwater, surface water, rainwater and reused/recycled water. "For each, the use rather than the source should determine the quality of the water supplied."[85] In view to harmonise the approach to

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[74] M/o Drinking Water and Sanitation (2013), National Rural Drinking Water Programme: Movement towards ensuring people's Drinking Water Security in Rural India, Guidelines 2013
[75] BIS (2012), Drinking Water Specification.
[76] BIS (2012), Drinking Water Specification.
[77] BIS (1984), Methods of Sampling and Test (Physical and Chemical for Water and Waste Water)
[78] M/o Rural Development, Department of Drinking Water and Sanitation (2011), Strategic Plan – 2011-2022: "Ensuring Drinking Water Security In Rural India"
[79] Cullet, P. (2014). Groundwater law in India: towards a framework ensuring equitable access and aquifer protection. Journal of Environmental Law, 26(1), 55-81.
[80] M/o Drinking Water and Sanitation (2013), Uniform Drinking Water Quality Monitoring Protocol, 2.1
[81] Environmental Law Research Society (2012), Governing Water in India: Review of Law and Policy Developments, ELRS
[82] M/o Water Resources (2012), National Water Policy, 1.3 (ix)
[83] M/o Rural Development, Department of Drinking Water and Sanitation (2011), Strategic Plan – 2011-2022: "Ensuring Drinking Water Security In Rural India"
[84] M/o Drinking Water and Sanitation (2013), Uniform Drinking Water Quality Monitoring Protocol
[85] M/o Drinking Water and Sanitation (2013), National Rural Drinking Water Programme: Movement towards ensuring people's Drinking Water Security in Rural India, Guidelines 2013

water safety planning, the National Rural Water Quality Monitoring & Surveillance Programme launched in 2006 has been merged with the National Rural Drinking Water Programme in 2010. [86] Further, in 2013 the MoDWS issued a revised version of the 2005 Uniform Protocol on Water Quality Monitoring notified by the Ministry of Environment and Forest in order to shift the focus towards drinking water quality and establish the operational link between water resource quality management and drinking water quality management.[87] This protocol standardises the requirement for setting up and functioning of laboratories at various level and specifies roles and responsibilities of the various stakeholders involved in water quality.

The paradigm shift introduced with the goal of "'ensuring water supply security at the house hold level" required to integrate a stronger focus on water quality requirements at delivery point for the NRDWP. The programme instructs that treatment could be at the delivery point or at the source, but water quality testing could be done at both ends. With this aim in mind, NRWDP addressed the challenges of processing the vast and increasing amount of samples required for monitoring & surveillance in rural areas[88], the limitations related to the water testing laboratories centralised at district level, and the functionalities of water testing in schools and other public institutions. The programme hence foresees to ensure the existence of testing laboratories at district, sub-divisional/sub-districts established whether under NRWDP funds, or in convergence with the National Rural Health Mission (NRHM), that would ideally by jointly managed by PRI and the State Public Health Engineer Department (PHED). With respect to surveillance of water at household level, NRDWP vests GPWSC/VWSC with responsibilities to ascertain drinking water adequacy, including livestock needs, in collaboration with the Accredited Social Health Activist (ASHA) of the NRHM. For this task, members of the GPWSC/VWSC may implement preliminary tests with a Field Test Kits and should subsequently transfer samples to sub-division labs for testing both chemical and biological parameters. The ASHA is inter alia in charge of carrying out sanitary inspection of all sources to prevent pollution, promote hygiene at household level and safe water handling, and record data on water sanitation disease. Hence monitoring is performed both by GPWSC/VWSC and AHSA, which will also authenticate the test results of Field Test Kits used in the village. Test results of all sources tested should be entered by the designated labs on the IMIS of the MoDWS.

In terms of surveillance coverage, sources should be tested at 100% at sub-divisional laboratories both for bacteriological and chemical and physical parameters. 10% of samples should be tested, including positively tested samples, by the district laboratories apart from routine cross verification by the State laboratory. The latter is also involved in testing concentrations of rare elements and in providing water quality testing reports to the State Government during natural calamities and disasters. Besides, as part of the Centre Government efforts to move toward international water quality standards, 28 laboratories across the country have been certified by the National Accreditation Board for testing and calibration Laboratories (NABL).[89]

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[86] Ibid.

[87] M/o Drinking Water and Sanitation (2013), Uniform Drinking Water Quality Monitoring Protocol

[88] This task "requires about 50 lakh (viz. 500 mio) samples to be tested annually with a norm of testing all sources once a year for chemical contamination and twice a year for bacteriological contamination." in M/o Drinking Water and Sanitation (2013), National Rural Drinking Water Programme: Movement towards ensuring people's Drinking Water Security in Rural India, Guidelines 2013

[89] M/o Drinking Water and Sanitation (2017), Swachh Bharat Mission and NRDWP: 3 Years of Good Governance

Regarding resource allocation, 3% of NRDWP funding to States is provided for water quality monitoring and surveillance with earmark instructions that central funding may only be used for specified expenditures related to setting up and upgradation of water quality testing labs, supply of field test kits, training to grass root level workers and data management.[90] Whereas staff costs must be borne by States or under others programmes. The NRDWP also foresees earmarked funding for chemical contamination and Japanese Encephalitis and Acute Encephalitis Syndrome (JE/AES) affected areas.

In terms of accountability, the supervision of water surveillance and monitoring programme is implemented by an expert team of the District Water and Sanitation Mission once in a quarter and by State Water and Sanitation Mission once in the semester. The inspection should in particular verify accordance with the norms and that the community has been involved in the analysis of water samples. It should also check that water quality information of the drinking water sources in a Gram Panchayat has been displayed transparently. The monitoring and surveillance results from the habitations are also to be put on the database of the MoDWS. The Central Government may as well carry out reviewing missions to the States.[91]

Rural Sanitation

With respect to rural sanitation, the HRWS vests states with responsibilities to ensure that sanitation facilities must be hygienically and technically safe to use and must effectively prevent human, animal and insect contact with human excreta to protect the health of users and the community. In addition, facilities should be equipped for anal and genital cleansing, as well as for menstrual hygiene management, including the disposal of menstrual products. With respect to the criteria of acceptability, the design and conditions of use of the sanitation facilities must correspond the preferences of users.

The Guidelines for the rural sanitation programme specifies that technology options should be acceptable to the beneficiaries both for Individual Household and for Solid and Liquid Waste Management. For Community Sanitary Complex, the chosen set up should be acceptable and accessible to all.[92]

Given the community-led total sanitation strategy underpinning the Swachh Bharat Mission in India, the role of authorities is not of a provider of facilities but one of a quality controller of toilets built in their constituencies. The 2014 Guidelines for SBM in rural areas thus instruct that "agencies who are in the frontline of implementation have a key role in ensuring that safety standards are being met with all components of SBM(G) e.g. the distance between water source and a latrine – regulating pit-depth, pit lining to prevent pollution, collapse of pit, etc."[93] These agencies should also take care of key hygiene behaviour such as keeping the environment around hand pumps / water sources clear and tidy and free of human and animal excreta. Among the various actors the guidelines encompasses under the category "implementing agencies"[94], the Block Programme Management Unit, situated at Block

[90] M/o Drinking Water and Sanitation (2013), National Rural Drinking Water Programme: Movement towards ensuring people's Drinking Water Security in Rural India, Guidelines 2013
[91] Ibid.
[92] M/o Drinking Water and Sanitation (2014), Guidelines for Swachh Bharat Mission (Gramin)
[93] Ibid.
[94] The Guidelines list of implementing agencies, unfolds as follow: National Swachh Bharat Mission (G); State Swachh Bharat Mission - State Water and Sanitation Mission; District Swachh Bharat Mission; Block

Panchayat level, is the designated agency for the control the quality of toilets being constructed and their usage in every GP. This agency should work as bridge between the District experts and the GPs.

With respect to gender issues, the guidelines stress that menstrual hygiene management should be focussed under the SBM by including this component for information and skills dissemination in IEC plans in all places and specifically amongst adolescent girls in schools. Funds under the SLWM components can also be used for setting up of Incinerators in Schools, Public Health Centres and Public toilets, for the safe disposal of menstrual hygiene waste. The Guidelines further recommend that awareness raising about menstrual hygiene management should target all stakeholders.[95] Menstrual hygiene management is further specified in guidelines issued by MoDWS in 2015.[96] Furthermore, these provisions were reaffirmed in the 2017 Guidelines on Gender Issues in Sanitation of the Minister. The latter recommends that efforts should be made to eliminate taboos and superstition regarding menstrual hygiene, in particular by involving faith leaders in awareness activities. [97]. It recalls that construction and communication related to separate toilets and menstrual hygiene management systems may be funded under the SWLM component of SBM. These guidelines also suggest the promotion of the role of fathers in helping daughters and calls for greater attention to the needs of elderly women, pregnant women, children, and the differently-abled.

Programme Management Unit; Gram Panchayat/ Village Water and Sanitation Committee; and Swachhata Doot/Sena (ie. grassroot worker in charge of identification of a beneficiary, assisting in the IEC, maintaining records and tracking progress).

[95] M/o Drinking Water and Sanitation (2014), Guidelines for Swachh Bharat Mission (Gramin)

[96] M/o Drinking Water and Sanitation (2015), Menstrual Hygiene Management: National Guidelines

[97] M/o Drinking Water and Sanitation (2017), Guidelines on Gender Issues in Sanitation

3.2 Procedural requirements

3.2.1 Non-Discrimination and Equality

As the cornerstone of international human rights law, the principle of non-discrimination cuts across every aspect of public policies pertaining to water and sanitation. It casts responsibilities upon authorities to take positive steps toward universal access to water and sanitation in a equitable manner. The Constitution of India enshrines the obligation of state not to deny equality before the law or equal protection of the laws of any person,[98] and prohibits the discrimination against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.[99] The Constitution explicitly states that « no citizen shall on grounds only of religion, race, caste, sex, place of birth or any of them be subject to any disability, liability, restriction or condition with regard to the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public. »[100] Furthermore, the consideration of the equality of laws and policies when addressing the most urgent needs of a certain category of the population as a matter of priority is constitutionally grounded with authorisation of special provisions with respect to women and children, as well as « any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes ».[101]

This latter clause allows for the identification of further specified categories of population. Thus, as exposed below, policies pertaining to water and sanitation reverts for instance to the designation of individuals classified as « Below Poverty Line »,[102] people with disabilities also referred as specially-abled people, minorities, people living in remote habitation, etc.

Regarding the policy framework, the National Water Policy establishes the « principle of equity and social justice must inform use and allocation of water »[103]. It directs that the « Centre, the States and the local bodies (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. » Similarly, the National Policy Framework for rural drinking water sets the objective to « ensure potability, reliability, sustainability, convenience, equity and consumers preference to be the guiding principles while planning for a community based water supply system. »[104] Further, it refers back to the 2022 strategic goal to provide every rural person in the country with « 70 lpcd within their household premises or at a horizontal or vertical distance of not more than 50 meters from their household ***without***

[98] Constitution of India, Part III, art. 14
[99] Constitution of India, Part III, art. 15 (1)
[100] Constitution of India, Part III, art. 15 (2)
[101] Constitution of India, Part III, art. 15 (3) and (4)
[102] As regard people living below poverty line, Government of India reported this category is expressed in terms of per capita consumption expenditure conforming to a consumption basket which satisfies the per capita daily calorie norm of 2400 Kilo calories (Kcal) in rural areas and 2100 Kcal in urban areas and meets a minimum of non-food requirements such as clothing, shelter, transport. Separate poverty lines are estimated for different states by disaggregating the national level poverty line to reflect the relative price differentials prevailing in the different states and the differences in the inflation rates among the States. *in* Government of India (2007), Implementation of the International Covenant on Economic, Social and Cultural Rights, Periodic reports submitted by States parties under articles 16 and 17 of the Covenant, E/C.12/IND/5, 1 March 2007
[103] M/o Water Resources (2012), National Water Policy
[104] M/o Drinking Water and Sanitation (2013), National Rural Drinking Water Programme: Movement towards ensuring people's Drinking Water Security in Rural India, Guidelines 2013 (emphasis added)

barriers of social or financial discrimination ». Hence the issue of inequality in the access of water has been raised for a significant time within the sector. The Rural Drinking Water Strategy for 2011-2022 acknowledges the need to address the significant inequalities between the rich and the poor by stressing that while about 32% of the rich people have piped connections on their premises, only about 1% of the poorest have this facility. It further refers to the fact that a proportionally lesser amount of resources are earmarked to SC/ST population compared to rural population as a whole.[105] Accordingly, the National Water Policy stresses the need "to remove the large disparity between stipulations for water supply in urban areas and in rural areas. Efforts should be made to provide improved water supply in rural areas with proper sewerage facilities. Least water intensive sanitation and sewerage systems with decentralized sewage treatment plants should be incentivized."[106]

Integrating the principle of non-discrimination into practise thus requires to consider on the basis of what criteria the current policies prioritise their support within the planning process, what special provisions they foresee for most marginalised and potentially vulnerable groups and what safeguards are in place to ensure a consistent implementation.

As regard the planning process pertaining to water and sanitation projects, the National Water Policy calls for the involvement of local governing bodies such as "Panchayats, Municipalities, Corporations, etc., and Water Users Associations, wherever applicable." This is consistent with the constitutionally grounded devolution process that provides leeway for states to confer responsibilities to local governing bodies with respect to water and sanitation. The National Water Policy specifies "the unique needs and aspirations of the Scheduled caste and Scheduled Tribes, women and other weaker sections of the society should be given due consideration."[107]

With respect to rural drinking water, the planning process is framed through a bottom-up approach to service delivery that involves all level of governing bodies from village up to state designated as water security planning. The Water Security Plan encompasses both the objectives of managing the water sources in a sustainable way and to enhance coverage of water service delivery through the development of infrastructures. In view of monitoring the principle of equality and non-discrimination, it should hence provide the base to monitor prioritisation of both water resource allocation and water infrastructure development.

As the lowest unit level of the planning process, villages are to constitute a Village Water and Sanitation Committee (VWSC), that should function as a standing committee or sub-committee[108] of Gram Sabhas for the preparation and implementation of Water Security Plan. The GP maintains their approval power over Water Security Plan. Constitution of VWSC stands as a condition regarding the planning, investment and implementation of all new single-village piped water supply schemes or in-village distribution systems of multi-village schemes since 2013.[109] The Village Water Security Plan is elaborated following the community-based demand driven approach in order to identify and update the information pertaining to the

[105] M/o Rural Development, Department of Drinking Water and Sanitation (2011), Strategic Plan – 2011-2022: "Ensuring Drinking Water Security In Rural India"
[106] M/o Water Resources (2012), National Water Policy
[107] M/o Water Resources (2012), National Water Policy
[108] Except for 6th Schedule Areas. cf. M/o Drinking Water and Sanitation (2013), National Rural Drinking Water Programme: Movement towards ensuring people's Drinking Water Security in Rural India, Guidelines 2013
[109] M/o Rural Development, Department of Drinking Water and Sanitation (2011), Strategic Plan – 2011-2022: "Ensuring Drinking Water Security In Rural India"

water needs of the communities and its related gaps in delivery. The document hence gathers information regarding the demographic, physical features, water sources, proposed work to augment the existing infrastructure and water sources, and funding by dovetailing various funds available at village level and requirement of funds from rural water supply programmes.[110] The demographic data are based on the Census 2011 to which a national population growth factor may be applied. The strategy to trigger water demand is based on IEC campaign, which should entail among other focus areas on gender specific water issues and equity issues.

Subsequently, Village Water Security Plans are compiled at district level for the production of their respective District Water Security Plan. Funding requirements of the latter is also addressed by dovetailing funds from different sources, rural water supply programmes and the NRDWP funds.[111] On the basis of District Water Security Plans, the State government prepares their Annual Action Plan, which is integrated in a 5-year time-framed Comprehensive Water Security Plan. In turn, the sub-goal and the priorities for each financial year is to be determined based on mutual consultation by the Centre and the State governments. The output of the bottom-up demand approach is hence processed following a top-down allocation of financial resources associated with conditionalities in the use of the latter. These conditionalities orientate resources with respect to prioritisation criteria.

The NRDWP[112] recalls the following priorities haven been set forth under the Eleventh Plan of the Planning Commission:

- Priority must be given to coverage of 0-25% and 25%-50% population coverage habitations and quality affected habitations in planning. All remaining habitation under 100% coverage are to be covered.
- Providing drinking water supply of existing infrastructures closer to households whose access is above 500m should be the highest priority.
- Households obtaining drinking water from uncovered wells and from other sources (other than handpump/tubewell, tap water or well water) should also be covered on priority.
- The maintenance of water supply systems, ensuring water quality, reliability and convenience of availability to every rural household in an equitable manner has been given priority.

Following directives of the Twelve Plan of the Planning Commission, the NRDWP requires to prioritize States which are lagging in terms of coverage with piped water supply for improvement up the ladder of service delivery in order to pursue the target standard of 55 lpcd, while ensuring basic minimum level of 40 lpcd for each household. It hence establishes the following norm:

- Highest priority should be given to habitations with 0-15 lpcd, then to habitations with 15-30 lpcd, then 30-40 lpcd and finally to these with 40-55 lpcd.

[110] M/o Drinking Water and Sanitation (2013), National Rural Drinking Water Programme: Movement towards ensuring people's Drinking Water Security in Rural India, Guidelines 2013
[111] M/o Drinking Water and Sanitation (2013), National Rural Drinking Water Programme: Movement towards ensuring people's Drinking Water Security in Rural India, Guidelines 2013
[112] M/o Drinking Water and Sanitation (2013), National Rural Drinking Water Programme: Movement towards ensuring people's Drinking Water Security in Rural India, Guidelines 2013

- There is no distinction between habitations not covered due to quality or quantity aspects. Hence, all water provided non-compliant with quality standards should not be accounted for in the targeted quantity.
- Among quality affected habitations, those affected with chemical contamination of source by arsenic and fluoride are given highest priority followed by those affected by excess iron, salinity, nitrate etc.[113]

With respect to contexts impacted by left wing extremism, the NRDWP also calls for the needs to focus on development of rural water supply in States with Integrated Action Plan in Naxal-affected districts.[114]

Further, the Nation Policy Framework for rural drinking water sets among its objectives to: provide drinking water facility, especially piped water supply, to Gram Panchayats that have achieved open defecation free status on priority basis.

Stemming from these set planning priorities, directives for the allocation of financial resource foresees earmarked funds toward targeted populations. In compliance with the Rural Drinking Water Strategic Plan 2011-2022[115], the 2013 NRDWP instructs earmarking of funds for SC, ST and minority concentrated habitations. The Strategic Plan also requires GPs/VWSCs to ensure minimum level of safe drinking water and sanitation for transient communities and to hold service providers accountable to deliver facilities to migrant labourers. These specifications are however not explicitly taken up by the NRDWP. The proportion of earmarked funds are instructed as follow:

- "At the Central level 22% of NRDWP funds are earmarked for Scheduled Caste Sub-Plan and 10% for Tribal Sub-Plan to be utilised for provision of drinking water supply to SC/ ST concentrated habitations.
- To accelerate the assured availability of potable drinking water on a sustainable basis in SC and ST concentrated habitations, the States/UTs are required to earmark at least the percentage of the NRDWP funds for drinking water supply to the SC concentrated habitations and ST concentrated habitations as is communicated by the Ministry of Drinking Water and Sanitation based on the directions issued by the Government of India from time to time. Habitations in which more than 40% of the population belongs to SCs are considered as SC concentrated and with more than 40% STs are considered as ST concentrated.
- Where the percentage of SC or ST population in a particular State is high and warrants earmarking/utilization of more than the stipulated provisions, additional funds may be utilized."[116]

Furthermore, the NRDWP foresees allocations of funds for communities living in remote or water scarce areas covered under the Desert Development Programme, the Drought Prone Area Programme, the Hill Areas Development Programme and special category Hill States up to a weightage of 40%.

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[113] M/o Panchayati Raj (2014), Drinking Water in Gram Panchayats, Active Book

[114] M/o Drinking Water and Sanitation (2013), National Rural Drinking Water Programme: Movement towards ensuring people's Drinking Water Security in Rural India, Guidelines 2013

[115] M/o Rural Development, Department of Drinking Water and Sanitation (2011), Strategic Plan – 2011-2022: "Ensuring Drinking Water Security In Rural India"

[116] M/o Drinking Water and Sanitation (2013), National Rural Drinking Water Programme: Movement towards ensuring people's Drinking Water Security in Rural India, Guidelines 2013

Accordingly, when submitting funds request under the NRDWP to the Centre, State governments should include inter-alia the following aspects in their Annual Action Plan:

- "Target for the year of coverage of habitations with 0% population covered, 0-25% population covered, 25-50% population covered, 50-75% population covered and 75-100% population covered and quality affected habitations, SC, ST and minority concentrated habitations, with their names, block, district, etc. with reference to census village code from the appropriate survey list in the website. Higher priority should be given to coverage of 0% population covered, 0-25% population covered, quality affected, SC, ST and minority concentrated habitations in planning. The names of habitations targeted should be marked on line;
- The schemes to be taken up to cover the targeted habitations, ongoing and new, piped or others, with their location, coverage, estimated cost, estimated expenditure, etc.
- Population to be benefited indicating separately the SC/ST, other backward classes and minority population."[117]

Besides, the NRWDP guidelines entail an additional prioritisation mechanism pertaining to the state legislative authority. Members of Parliament may thus submit proposals for construction of rural water facilities within their constituencies that should be given priority in planning. Decisions over their proposals must be communicated back to them with justifications in case of denied proposals.

Finally, in the event of a PPP contracts for water supply, the NRDWP requests due consideration of aspects like "equity in access of SC, ST and poor households to drinking water supply, medium term and long term recurring liabilities likely to develop on the Government or the community due to PPP agreements, sensitive nature of water being a finite basic necessity with many competing demands, management of rejects of water treatment plants etc."

Rural Sanitation

As regard rural sanitation programme in India, the issue of social inclusion has also been taken into account. The impact study of the former Total Sanitation Campaign, called Nirman Bharat Abhiyan, made recommendations to further improve social inclusion albeit a household survey already showed a state of progress in the matter.[118] In particular, the evaluation proposed the creation of incentives to encourage communities to cover most marginalised households (in terms of social, economical, hydro-geological barriers). It also called for the setting of inclusion mechanisms regarding exposure to IEC activities and inclusion in micro-

[117] M/o Drinking Water and Sanitation (2013), National Rural Drinking Water Programme: Movement towards ensuring people's Drinking Water Security in Rural India, Guidelines 2013

[118] "As high as 68% to 81% of the households, school/ anganwadi and PRI confirm the view that social inclusion of SC/STs have improved. There are about 8% - 9% respondents who are of the opinion that there was no evidence of such a change while 8% - 21% respondents had no views to share on this issue. Only a negligible 1% - 2% felt that the social inclusion of the ST/STs that the situation has worsened." in M/o Rural Development, Department of Drinking Water and Sanitation (2011), Assessment Study of Impact and Sustainability of Nirmal Gram Puraskar

level group formations, special efforts to cope with their technical issues as well as extension of financial support that consider affordability of facilities for the households.

The current rural sanitation programme, launched as the Swachh Bharat Mission (SBM) in 2014, has factored in special provisions regarding equity issues. Although none of its four objectives contain non-discrimination relevant aspects, the 2014 SBM guidelines entail a component on equity and inclusion. This component stipulates that a priority of implementing agencies of the programme shall be to provide access to "the different categories of people who are not able to access and use safe sanitation facilities".[119] It further describes these categories as including among others:

> "those who are socially and economically marginalised, those who are unable to use sanitation facilities constructed with standard designs. Women, children, people of certain castes, faiths and ethnicities, older people, pregnant women, people with disabilities, geographically marginalised populations in remote areas, as well as those living in areas where it is difficult to construct simple toilets due to high water tables, sandy soils or hard rock may be given priority while planning for coverage."

In addition, the guidelines require the consideration of gender aspects pertaining to dignity and safety issues account at each stage of planning, implementation and post implementation management of sanitation issues. Guidelines specific to gender urges the targeting of both women and men in view of empowering women and girls in positive role with respect to sanitation and avoid negative stereotyping; in particular regarding the promotion of the traditional role of women in toilet maintenance and similar caste consideration.[120] These guidelines also advocate for the inclusivity if third-gender persons in sanitation issues, and in particular for the possibility to let them choose to use male or female toilet. Beside, MoDWS has produced a handbook on accessible household sanitation for Persons with Disabilities that contains inclusive planning provisions.[121]

As regard the planning process, SBM guidelines suggest that the level of planning for implementation should be the district. In line with priorities set forth, there should be a suitable targeting of GPs and an appropriate district wide Information, Education and Communication (IEC)/social mobilization campaign. Based on updated version of the baseline survey on sanitation, an overall strategy to reach all sections of society must be captured in a detailed IEC plan under the Annual Implementation Plans of the district. IEC plan should be approved by District Water and Sanitation Mission with technical support of the Water and Sanitation Support Organisations. IEC plan are backed by Capacity Building Action Plan to ensure suitable manpower is in place for the programme. All district plans are further consolidated in the Annual Implementation Plan of the State, which feeds into the respective Programme Implementation Plan of the State.

With respect to the implementation mechanism, the guidelines allow for flexibility for States to decide whether the construction of household toilets be undertaken by the individual beneficiaries themselves with support from agencies in the village, to provide incentives, or - where the community model is necessarily adopted to trigger the demand in GPs/Blocks/Districts - to communities or to the GPs on the achievement of community objectives.

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[119] M/o Drinking Water and Sanitation (2014), Guidelines for Swachh Bharat Mission (Gramin)
[120] M/o Drinking Water and Sanitation (2017), Guidelines on Gender Issues in Sanitation
[121] M/o Drinking Water and Sanitation (2016), Handbook on Accessible Household Sanitation Facilities for Persons with Disabilities

As regards the construction of Individual Household Latrines, the guidelines establishes the following priorities:

- "Old Age Pensioners / Widow Pensioners /Disability Pensioners (National Social Assistance Programme {NSAP} beneficiaries)
- Pregnant and lactating mothers covered by Maternal Health Programmes of Central and State Governments, including Janani Suraksha Yojana under National Rural Health Mission; and
- Girl children covered by any Scheme benefiting the girl child"[122]

Similarly to the NRDWP, the SBM foresees earmarked funds for special categories of population in a form of incentives for Individual Household Latrine (IHHL) construction. The guidelines require though that incentives in general may only be available for these specific population while others must rely on their own funding. Incentives as provided under SBM target all Below Poverty Line (BPL) Households and Above Poverty Line (APL) households restricted to SCs/STs, small and marginal farmers, landless labourers with homestead, physically handicapped and women headed households.

> "The Incentive amount provided under SBM(G) to Below Poverty Line (BPL) /identified APLs households shall be up to Rs.12,000 for construction of one unit of IHHL and provide for water availability, including for storing for hand-washing and cleaning of the toilet. Central Share of this Incentive for IHHLs shall be Rs.9,000/- (75%) from Swachh Bharat Mission (Gramin). The State share will be Rs.3,000/-(25%). For North Eastern State, and Special category States, the Central share will be Rs. 10,800/- and the State share Rs.1,200/- (90% : 10%). The beneficiary is to be encouraged to additionally contribute in the construction of his IHHL to promote ownership. State Governments have the flexibility to provide higher incentive for a household toilet, for higher unit costs from sources other than SBM(G**)**. However, this additional funding cannot be from the Central share of any other Centrally Sponsored Scheme."

The latter provision has been set to address the issue of delays due to funds convergence under the MNREGS rural employment scheme that has affected the former rural sanitation programme. Thus this provision differs from the dovetailing funds mechanism foreseen under the NRDWP.

Prohibition of manual scavenging

One critical challenge pertaining to equality, dignity and sanitation in India is the issue of manual scavengers that remains significantly rooted in excreta management patterns. According to Socio Economic and Caste Census 2011, 180'657 people in rural areas are still employed as manual scavengers with a predominance in the states of include Maharashtra (63'713), Madhya Pradesh (23'093), Uttar Pradesh (17'619), Tripura (17'332), Karnataka (15'375) and Punjab (11'949).[123] This social practise concerns directly the labour rights as part of the State obligation to abolish degrading forms of work.[124] It has indirect implication for the human right to sanitation though since latrine that are not continuously maintained impede

[122] M/o Drinking Water and Sanitation (2014), Guidelines for Swachh Bharat Mission (Gramin)
[123] National Institution for Transforming India (2015), Report of the Sub-Group of Chief Ministers on Swachh Bharat Abhiyaan
[124] UN Committee on Economic, Social and Cultural Rights (2008), Consideration of Reports Submitted by States Parties Under Art. 16 and 17 of the Covenant, E/C.12/IND/CO/5

the availability of sanitation facilities. The State of India addressed this issue by prohibiting insanitary latrine, manual scavenging. and hazardous cleaning of sewer and septic tanks. The 2013 Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act thus requires the demolition of insanitary latrine[125] or their conversion in sanitary latrines. Accordingly, the Swachh Bharat Mission complies with these prescriptions and suggests that in case of conversion to rural sanitary latrines a sharing pattern for incentive identical to construction of individual household latrines be made for the targeted beneficiaries.[126] Likewise, regarding urban areas the Swachh Bharat Mission includes conversion of insanitary latrines into pour-flush toilets by making all households with single pit and insanitary toilets. It further instructs the identification of manual scavengers and provide them adequate rehabilitation. No rehabilitation provision is included in the rural component of the mission however. Another effort of the Government of India to improve conditions of manual scavengers is the rural housing scheme Pradhan Mantri Awaas Yojana that targets them in priority along with bonded labourers, women in difficult circumstances, widows of defence, paramilitary and police personnel killed in action, mentally and physically challenged persons, households with single girl child.[127]

In spite of this legal framework, prevalence of insanitary latrines remains high in India with respectively 586'067 households still using such prohibited latrines in rural areas against 208'323 households using these in urban areas. Hence the National Institution for Transforming India calls for the strict enforcement of the 2013 Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act with special focus in the surveillance of the prohibition of insanitary latrines in order to avoid an increase in manual scavenging. [128]

Considerations on Safeguards for Non-Discrimination In Planning

An important point of departure while assessing States' efforts to address inequalities in the access to water and sanitation requires taking into consideration the root causes of the phenomenon. This implies to consider that the existence of poverty and least wealthier sections of society, is to a great extent the result of a social discrimination process based on various identity features.[129] Thus addressing inequalities in water and sanitation solely with respect to the factor of disparities in wealth and income is ineffective. Safeguards relevant to the root causes of discrimination must be set in place in order to ensure planning of water and sanitation projects will lead to the reduction of inequalities.

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[125] ""insanitary latrine" means a latrine which requires human excreta to be cleaned or otherwise handled manually, either in situ , or in an open drain or pit into which the excreta is discharged or flushed out, before the excreta fully decomposes in such manner as may be prescribed:
Provided that a water flush latrine in a railway passenger coach, when cleaned by an employee with the help of such devices and using such protective gear, as the Central Government may notify in this behalf, shall not be deemed to be an insanitary latrine" in Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013, art. 2 (e)

[126] M/o Drinking Water and Sanitation (2014), Guidelines for Swachh Bharat Mission (Gramin)

[127] National Institution for Transforming India (2017), Appraisal Document of Twelfth Five Year Plan 2012-17

[128] National Institution for Transforming India (2015), Report of the Sub-Group of Chief Ministers on Swachh Bharat Abhiyaan

[129] Inga T. Winkler, Margaret L. Satterthwaite and Catarina de Albuquerque (September 2014): Measuring What We Treasure and Treasuring What We Measure: Post-2015 Monitoring for the Promotion of Equality in the Water, Sanitation, and Hygiene Sector. In Public Law & Legal Theory Research Paper Series Working Paper N°14-48, New York University School of Law.

As exposed above, the state of India has grounded constitutional safeguards to counter the discriminatory practices inherited from the caste system as well as other sources of exclusion. Accordingly, its legal and policy framework for water and sanitation encompasses provisions to address inequities in the sector in the form of policy objectives, earmark funds, financial incentives and awareness activities. With respect to monitoring safeguards, the sector policies revert to the principle of representativeness in participation. As mentioned in the next section, the VWSCs and all local governing bodies foresee reservation seats for members of SC, ST, minorities as well as for women, that may theoretically be in position to influence the planning process. The Sarpanch, viz. the Head of the GP, is officially vested with the responsibility to ensure equity in water supply and access with special attention to SCs/STs/weaker sections and distant areas[130]. Besides, since the annual actions plans and annual implementation plans contain specific targets regarding marginalised groups, both Centre and State government may monitor compliance of the implementing agencies in this regard. Yet, with respect to the State obligation of result pertaining to the HRWS, the effectiveness of these safeguards must still be questioned and evaluated.

As the first step in the identification of water demand, one crucial question in the sector is thus the effectiveness of the community-based demand approach in ensuring the reduction of disparities. From the point of view of policy makers, this approach essentially relies on the assumption that community is a unit characterised by mutual supportive skills. Building on that, a democratic dialogue in PRIs may lead to the successful delivery of services to most marginalised groups. Yet, field studies have provided evidences that this assumption turns out to be irrelevant in many cases.[131] Village communities are often complex and fragmented environment with strong power relations at play. There are hence many examples in which members of a village have been discriminated against in their access to water; such as when they did not financially contribute to a water scheme, for their lack of relations with the Sarpanch, because they are opposed to a community leader that controls the water scheme.[132] The pervasive nature of social discrimination within communities and their related local governments authorities ultimately begs the question to what extent GPs and VWSCs may succeed in working for the general interest of society. Although a debate has been settled with respect to legal requirement that VWSC cannot be positioned as alternatives to GP[133] but should act as standing committee,[134] both institutions have brought scepticism regarding their capacity to function democratically.[135] At the time of the civil society consultations in the frame of the preparation the Twelfth Five Year Plan, this was epitomized by the inability to

[130] M/o Pachayati Raj (2014), Drinking Water in Gram Panchayats, Active Book
[131] *See* Cullet, P. (2009). New policy framework for rural drinking water supply: Swajaldhara guidelines. Economic and Political Weekly, 47-54; Sampat, P. (2007). Swajaldhara or'Pay'-jal-dhara: Right to Drinking Water in Rajasthan. Economic and Political Weekly, 102-110; Arghyam, WaterAid, UN SolutionExchange - Water Community (2010), Inputs from the Civil Society Consultations on Rural Water and Sanitation for the Approach Paper to Planning Commission's 12th Five Year Plan
[132] Sampat, P. (2007). Swajaldhara or'Pay'-jal-dhara: Right to Drinking Water in Rajasthan. Economic and Political Weekly, 102-110
[133] Report of the Expert Group (2006), Planning at the Grassroot Level: An Action Programme for the Eleventh Five Year Plan, New Delhi
[134] M/o Drinking Water and Sanitation (2013), National Rural Drinking Water Programme: Movement towards ensuring people's Drinking Water Security in Rural India, Guidelines 2013
[135] See for instance: James, A. J. (2004). India's Sector Reform Projects and Swajaldhara Programme A Case of Scaling up Community Managed Water Supply; Sampat, P. (2007). Swajaldhara or'Pay'-jal-dhara: Right to Drinking Water in Rajasthan. Economic and Political Weekly, 102-110.

settle a consensus on the issue of the relations between GP and VWSC with respect to the best pattern to reflect community aspirations.[136]

Therefore, the debate with respect to inequalities in the sector should refocus on risk inherent to the community based demand approach of inequitably favouring members of the communities benefiting from the political ties and the financial capital to pay a requested contribution at the expense of other parts. There should be a reflection as to whether the safeguards in place are at such sufficient to address inequalities; in particular with respect to the formal representativeness of minorities in GP/VWSC and the prioritization line for proposals of Member of Parliament. A study on the shortcomings of demand driven approach of IWMP, commissioned by the Department of Land Resources of the Mo Rural Development in 2015, points out to the advantages of a target oriented approach to mitigate the risk of inequitable distribution of benefits.[137] It further advises for a mixture of both demand driven and target oriented approaches proposes to balance respective disadvantages and capitalize on advantages. In terms of best practises, it is also worth noting that the State of Benin has dropped the demand driven approach for the water and sanitation sector on the basis of findings of inequity and subsequently set in place a targeted approach of district planning based on a comprehensive analysis of the needs of communities and on a prioritization process with explicit set of criteria.[138] In the same vein, as part of a national monitoring programme focusing on key issues of the sector, the State of Uganda has created an indicator on equity, which consists of a standard deviation formula to measure disparities of access at district level.[139] These examples could support the Government of India in its efforts to address inequalities.

As regard access to sanitation, this issue of non-discrimination is framed differently. This stems from the specificity that demand for sanitation services in most cases necessarily has to be preceded by raising awareness among communities of health issues associated with open defecation. Hence the sanitation demand is related to a collective health improvement demand and, as such, less individualist then water demand. The community-led total sanitation methodology, retain as triggering mechanism for behaviour change for the SBM, has been identified as best practise with respect to the implementation of the right to participation for the HRWS.[140] The approach implies an inclusive approach in planning since it aims to set the end of open defecation as a collective objective. Besides, the SBM has formally addressed the risk of social exclusion on the base of affordability thanks to the financial incentives earmarked for special categories of the population. The monitoring system also enables to follow up progress in access to sanitation with disaggregated data for SC, ST and BPL, as well as the funds ring-fenced for these categories of people within the state annual implementation plan.

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[136] Arghyam, WaterAid, UN SolutionExchange - Water Community (2010), Inputs from the Civil Society Consultations on Rural Water and Sanitation for the Approach Paper to Planning Commission's 12th Five Year Plan

[137] Institute for Resource Management and Economic Development (2015), Study to pragmatically analyze the shortcomings of demand driven approach of IWMP for transforming the scheme to target oriented approach, Sponsored by Department of Land Resources, M/o Rural Development, Government of India

[138] WaterLex et al. (2014), Vers un cadre pour la coopération décentralisée pour l'eau et l'assainissement au Bénin: une étude sur le rôle de la coopération décentralisée dans la mise en oeuvre du droit humain à l'eau et à l'assainissement au Bénin, WaterLex, Geneva

[139] Alabaster, R.A and Kruckova , L (2015) Uganda Country Mapping: The Status of implementation and monitoring of the human right to water and sanitation. WaterLex, Geneva

[140] UNGA (2014), Report of the Special Rapporteur on the human right to safe drinking water and sanitation, A/69/213

Notwithstanding, the community-led total sanitation has also raised some concerns with respect to reverting to peer pressure as a mean to force people to comply with the social norm of ending open defecation. The main challenge is to implement the method in a way that may promote and respect human dignity in order to maintain compliance with human rights.[141] Thus any form of peer pressure that implies humiliation bears the risk, pushed to the extreme, to infringe dignity. The side-effects of community-led total sanitation are particularly related to the time required for community work and for proper ownership of the process that may ensure the moral imperative of dignity.

In that view, the ambitious timeframe set by the SBM calls for careful attention of this issue. The MoDWS already expressed concerns with respect to the reinforcement of gender stereotyping in messages vehiculated through the SBM such as "shame and dignity of women" that led to positioning of the ministry against such stereotypes in the Gender Guidelines. [142] Such concerns should also be examined for marginalised groups and poorer sections of the society in order to avoid that SBM related actions derive in forms of severe humiliation or degrading treatments.
Another area of concern is government decisions aiming to raise the stakes of communities as an incentive to achieve end of open defecation. For instance, as mentioned in 2013 NRDWP, the National Policy Framework states that piped water supply should be prioritized in villages with ODF status. A decision that may be sound in as far as fundamental access to safe water is already ensured, in view to ensure basic hygiene conditions are met prior to increasing water level access. Yet, other steps have been taken to further raise the stakes. The NITI recommends that "anybody contesting an election for local bodies must have an individual household toilet".[143] From a legal point of view, that recommendation could amount to an infringement of the fundamental right to participate in public affairs.[144] In practise, it could have counterproductive effects as it could undermine to possibility of communities to influence local authorities that would not fulfil their obligations to implement the sanitation programme. Likewise, the 2016 Guidelines of the MoDWS on ODF sustainability inform of the GoI decision to prioritize all Centrally Sponsored Schemes in ODF villages and recommends that State governments take similar policy decisions.[145] Provided that safeguards set for equality could fail to be implemented in some contexts, this policy could further discriminate communities that would not have succeeded in achieving ODF for reasons beyond their capacity with respect to all other human rights relevant to other Centrally Sponsored Schemes.

A final recommendation would be to reframe the debate in the water sector to discuss about equality and non-discrimination in stead of equity issues. As stated by the former Special Rapporteur on the HRWS, equity is a "malleable concept whose content is uncertain and that is not legally binding."[146] While it calls for a focus on the most disadvantaged and the poorest

[141] De Albuquerque, C., & Roaf, V. (2012). On the right track. Good practices in realising the rights to water and sanitation. Available at
http://www.ohchr.org/Documents/Issues/Water/BookonGoodPractices_en.pdf
[142] M/o Drinking Water and Sanitation (2017), Guidelines on Gender Issues in Sanitation
[143] National Institution for Transforming India (2015), Report of the Sub-Group of Chief Ministers on Swachh Bharat Abhiyaan
[144] International Covenant on Civil and Political Rights, art. 25.
[145] M/o Drinking Water and Sanitation (2016), Swachh Bharat Mission (Gramin), ODF Sustainability Guidelines
[146] Inga T. Winkler, Margaret L. Satterthwaite and Catarina de Albuquerque (September 2014): Measuring What We Treasure and Treasuring What We Measure: Post-2015 Monitoring for the Promotion of

and refers to the moral imperative to dismantle unjust differences, that concept "may dilute rights claims if separately from equality and non-discrimination".[147] Framing discussion in terms of equality and non-discrimination would thus align all sector policies with art. 14 and art. 15 of the Constitution of India as presented in the outset of this section.

3.2.2 Participation and Access to information

The human rights to water and sanitation can only be realised in an effective manner when people become part of all processes that relate to the realisation of these rights. Participation ensures better implementation and enhances the effectiveness and sustainability of interventions, as it ensures that local conditions and needs can be taken into account. Thus, opportunities for participation, including community needs assessments, must be established as early as possible. Any plan or decision-making that relates to the realisation of the rights to water and to sanitation must be developed through a participatory and transparent process.

Access to information refers to the public entitlement to seek and receive information about current and planned water and sanitation law, policies and programmes. This encompasses the duty of the state to make information available, including for example on the provision of services, tariff systems and the quality of water and sanitation. Only informed users of water and sanitation services will be able to voice concerns and hold entities to account.

Both of these principles are well accepted and integrated in the water and sanitation framework of India. Access to information in particular is embedded in Indian legislation through the Right to Information Act, 2005 (RTI Act), which extends to the whole of India except Jammu and Kasmir and seeks to afford every citizen the right to access information held by public authorities with a view to encouraging transparency and accountability in government.[148] Authorities have the responsibility to record and maintain appropriate records and any request for information should be handled expeditiously.[149]

At the level of the policy, the National Water Policy imparts in its basic principles that: "Good governance through transparent informed decision making is crucial to the objectives of equity, social justice and sustainability. Meaningful intensive participation, transparency and accountability should guide decision making and regulation of water resources."[150] The policy also calls to address the issue of the lack of stakeholders consultation by public agencies in charge of taking water related decisions, "often resulting in poor unreliable service characterized by inequities of various kinds". Hence, water resources projects and services should be managed with community participation,[151] and community based water management should be institutionalized and strengthened.[152] Further, in terms of water resource management, National Water Policy instructs that aquifers mapping and monitoring process should be fully participatory involving local communities and periodically updated.[153]

Equality in the Water, Sanitation, and Hygiene Sector. In Public Law & Legal Theory Research Paper Series Working Paper N°14-48, New York University School of Law.

147 Ibid.

148 The Right to Information Act, 2005, preamble

149 The Right to Information Act, 2005, Art. 4, Art. 7.

150 M/o Water Resources (2012), National Water Policy

151 Ibid., 12.3

152 Ibid., 3.6

153 Ibid., 5.3

With respect to demand management and water use efficiency, the policy states a concurrent mechanism involving users for monitoring should be set, "if the water use pattern is causing problems like unacceptable depletion or building up of ground waters, salinity, alkalinity or similar quality problems, etc., with a view to planning appropriate interventions".[154]

In the same vein, the Strategic Plan for rural drinking water specifies that transparency of information is a critical first step towards effective regulation and thus advises States to "provide access to information through online reporting mechanisms with information placed in the public domain to bring in transparency and informed decision making."[155] As regard integrated water resource management, it also establishes a holistic approach with active community and PRI participation in villages at a watershed or aquifer or a hydrological unit level. It further specifies, "strategies should include a water budget with community monitoring of water tables to balance demand (especially irrigation and industrial demand) with available water as well as local measures for rainwater harvesting and groundwater recharge. States may also consider giving GPs more power over local water sources, so that agricultural and industrial use could be regulated so as not to jeopardize domestic water requirement."[156]

Furthermore, as exposed in the previous section on non-discrimination and equality, both water and sanitation policies adopt a demand-led approach to planning and community-based management models. This logically implies a strong involvement of communities, which should access relevant information in order to play their role in the development of water and sanitation facilities. The participation provision in the guidelines for planning, O&M and monitoring of water supply schemes and sanitation issues casts a key responsibility in the VWSC as a direct standing committee of the GP.[157] The VWSC may be merged with the Village Health Committee set up under the National Rural Health Mission in case there is a will to centralise water and health issues. The composition of this committee may consist of about 6 to 12 persons, comprising elected members of the Panchayat, women with due representation to SCs, STs and poorer sections of the village. A model composition of GPWSC/VWSC should include 50% representation of women, including Accredited Social Health Activists, Anganwadi Workers, etc..[158] MoDWS guidelines on gender issues in sanitation further stress that women should have access to leadership positions in VWSC, Village Health Committee or WASH Committee.[159] The Strategic Plan for rural drinking water states more broadly that "women should be included in all aspects of decision making with respect to drinking water security planning, implementation, operation, maintenance and management".[160] Further, the composition and functions of the GPWSC/VWSCs can be regulated by a set of by-laws under the State Panchayati Raj Act.[161]

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[154] Ibid., 6.7

[155] M/o Rural Development, Department of Drinking Water and Sanitation (2011), Strategic Plan – 2011-2022: "Ensuring Drinking Water Security In Rural India"

[156] Ibid., 4.1

[157] M/o Drinking Water and Sanitation (2013), National Rural Drinking Water Programme: Movement towards ensuring people's Drinking Water Security in Rural India, Guidelines 2013

[158] M/o Panchayati Raj (2014), Drinking Water in Gram Panchayats, Active Book; M/o Drinking Water and Sanitation (2014), Guidelines for Swachh Bharat Mission (Gramin)

[159] M/o Drinking Water and Sanitation (2017), Guidelines on Gender Issues in Sanitation

[160] M/o Rural Development, Department of Drinking Water and Sanitation (2011), Strategic Plan – 2011-2022: "Ensuring Drinking Water Security In Rural India"

[161] M/o Drinking Water and Sanitation (2013), National Rural Drinking Water Programme: Movement towards ensuring people's Drinking Water Security in Rural India, Guidelines 2013

In spite of the fact that community-based management models offer the possibility for community members to directly engage in information and decisions in comparison to public or private management models, this does not at such ensure a sufficient disclosure of information to all community members. Dissemination of some information may be sensitive from the point of view of community managers and GP representatives, in particular as regard issues pertaining to financial circuit.[162] Therefore, the policy framework foresees the setting of regular community monitoring and social audits.

As defined by the NRDWP, a " social audit is a way of measuring, understanding, reporting and ultimately improving an organization's social responsibility and ethical performance. A social audit helps to narrow the gap between the perception of the line department's definition of services provided and the beneficiaries' level of satisfaction of the service provided. Social auditing also enhances the performance of the local self government, particularly for strengthening accountability and transparency in local bodies and it focuses on the neglected issues related to marginalised/poor groups whose voices are rarely heard."[163] The guidelines instructs a social audits to be scheduled every six months by the community organisation to ensure the accordance of works undertaken by PHED, related departments and PRIs with the planning and proper utilisation of funds. In terms of measuring outcomes of water services, the guidelines suggest to evaluate the performance of the following parameters, that could be integrated in the benchmarking mechanism and performance index in order to level up States, Districts and Panchayats engagement:

- "Distance from source
- Time taken for fetching water
- Access and usage
- Quality and quantity
- Hours of supply per day
- Days of supply per week
- Reliability of supply during summer months
- Responsiveness of the service providers
- User satisfaction"[164]

Furthermore, both the State level agency and the PHED must provide all relevant information to the District level Vigilance and Monitoring Committee.

Similarly, the guidelines for the Swachh Bharat Mission vests GP with the responsibility to organise and assist in organising social audits of the rural sanitation programme with scheduled meeting in GP once in six months.[165] In addition, District Swachh Bharat Mission and Block Project Management Unit are responsible to ensure that this schedule is adhered too. The social audit may be carried out any specific village level body/committee/SHG in coordination with GP. To improve transparency in financial matters, the guidelines also

[162] See: Sampat, P. (2007). Swajaldhara or'Pay'-jal-dhara: Right to Drinking Water in Rajasthan. Economic and Political Weekly, 102-110.

[163] M/o Drinking Water and Sanitation (2013), National Rural Drinking Water Programme: Movement towards ensuring people's Drinking Water Security in Rural India, Guidelines 2013

[164] Ibid.

[165] M/o Drinking Water and Sanitation (2014), Guidelines for Swachh Bharat Mission (Gramin)

recommend to open a separate account for each VWSC of a GP through with the funds of the mission should be routed, and to hold financial audit from time to time.

From the point of view of civil society as well, the conduct of social audits is identified a key mechanism to trigger better governance with respect to transparency and accountability issues. In the frame of the civil society consultation for the elaboration of the Twelfth Five Year Plan in 2010, [166] recommendations were issued as to render social audits mandatory for the various domestic water and sanitation programmes at GP, block and district level with involvement of GPs and relevant State line departments. To ensure proactive disclosure of information related to plan, process and allocation of budgets, a recommendation was made to formulate a provision for mandatory compliance under article 4 of the RTI Act 2005 in the WATSAN Guidelines. The recommendations further advocated for the creation of a community-led prepared "Citizen Charger" in each State and called to address the issue of lack of reliable data regarding socially disadvantaged groups by creating geo-localised mapping tools.

More recently, commitment from the Union Government in the matter stems from the Administrative Reforms Commission recommendation that operational guidelines of all developmental schemes and citizen-centric programmes should provide for a social audit mechanism. Since April 2014, all Ministries and Departments are to inform the arrangement for audit or social audit within their proposals submitted to the Ministry of Finance.[167] The NITI Aayog also requests that social audit be included in the operational guidelines in the national flagship programme pertaining to – inter alia - water and sanitation.[168] Further, the Fourteenth Finance Commission has recommended that grants for GPs be divided in two parts: "a basic grant (constituting 90 per cent of the total grant) to be given to all local bodies, and the remaining 10 per cent as a performance-based grant to be provided to address the following issues: (i) making available reliable data on local bodies' receipt and expenditure through audited accounts; and (ii) improvement in own revenues."[169] The NITI Aayog also reports that "core common application have been devised to address the entire spectrum of Panchayats functioning" in view to enhance transparency and accountability, with application for the electronic delivery of services to citizens. Further, States have been encouraged to put the expenditure details and Annual Plans of the PRIs in public domain.

With the development of modern measures to enhance public participation and access to information, States should keep in the line of sight that all these should be made available for the most marginalised and vulnerable groups of the society. As a matter of safeguard, the standard of free, prior and informed consent should be implemented in regards of all decision to the access to water and sanitation of marginalised groups. At a more general level, the inclusion of civil society recommendations in the elaboration of national development plan and public policies should be consistently sought for. As mentioned above, the experience of the consultation of civil society for the preparation of the Twelfth Five Year Plan with broad base of 1,149 representatives, should be maintained as a best practise. In this vein, all central

[166] Arghyam, WaterAid, UN SolutionExchange - Water Community (2010), Inputs from the Civil Society Consultations on Rural Water and Sanitation for the Approach Paper to Planning Commission's 12th Five Year Plan

[167] National Institution for Transforming India (2017), Appraisal Document of Twelfth Five Year Plan 2012-17

[168] Ibid. It is however puzzling to note that the document refers to the name of the former national schemes for water and sanitation.

[169] Ibid.

ministries and State governments, have been advised to take necessary measures for institutionalization of Joint Consultative Groups in the planning process.[170] It is thus also the role of civil society members to ensure that theses processes are fully implemented.

[170] Ibid.

4. CONCLUSION

Whilst the country of India is embarking on the road to Sustainable Development Goal N°6, the many challenges pertaining to the sustainability of a the dire water resource and the facilities to deliver related water and sanitation services calls for a great attention on the issue of inequality in access. If not addressed, the growing competing demands among sectors and between the various levels of the Federal State of India could steadily transform into a series of water crises. In order to establish an inclusive society on sustainable grounds organised around sound management of the water resource, there is a need for a comprehensive framework that will ensure no one is left behind. Thus the human rights to water and sanitation (HRWS) provide such a framework and its application is of major importance in two respects: First it provides a backdrop against which to evaluate the soundness and ethical grounds of public policies. Second, it empowers individuals to act as agents of change within the collective and participative effort to achieve the Sustainable Development Goals.

Recognition of HRWS in India`s Legal and Policy framework

The State of India has clearly supported the recognition of the human rights to water and sanitation at a universal level and ratified several human rights treaties pertaining to these rights, the process of incorporation of the latter in the legal framework is currently in process with two draft legal instruments still waiting for the required political support to come into force. These laws are critical in enabling the establishment of a comprehensive framework for the implementation of these rights.

The outcomes of the study point to several gaps that should be addressed to improve the realisation of HRWS, whose main ones are the following:

Minimum Standards for water availability: First, there is need to clarify the standard pertaining to availability of water. The policy framework established in 2011 a progressive ladder of service delivery spanning from 40 lpcd as the basic minimum level, to 55 lpcd as the minimum level and up to 70 lcpd as the long-term target for 2022. Yet the basic minimum level had to be progressively confined to extreme cases while 55 lpcd was to become the reference norm by 2017. It is however not clear when and how this transition is to take place.

Minimum Standards for public facilities: The study found no official standards with respect to the potential of water and sanitation and their users in order to ensure the availability criteria of the HRWS. In particular, schools and Angawandis would benefit from having determined water quantities and number of toilets per gender incorporated into a standard ratio to pupils and health centre beds to define when these public institutions may be considered as covered.

Monitoring Affordability: Related with the extension of piped water schemes, is the issue of affordability of water and sanitation services. Although affordability may be found as an ethical principle in statements integrated in the policy framework, its operationalisation is not straightforward. In particular, it lacks the definition of threshold values to assess the extent of that disposable household incomes households should contribute to water and sanitation

direct and indirect costs. The latter would hence require a strong coordinated approach to consolidate at household level water, sanitation, hygiene costs, topped by energy costs in case of community-based management facilities. Moreover, there is a lack of disconnection policy compliant with human rights standards in case households rely on grid water and sanitation schemes. This appears as main concern given the shift toward piped water supply the rural drinking water sector as embarked on in order to improve availability standards.

Water quality/safety: Another component that benefited a significant government measure is the issue of water quality. Although the issue is now based on a water security planning approach in order to connect both resource management and management at point delivery, there remains a gap for the definition of uniform and legally compulsory quality standards that would be valid across the country.

Non-discrimination and inequalities: In order to avoid any exclusion from water and sanitation facilities, there is a need to question the reliability of safeguards pertaining to non-discrimination in planning processes with respect to water security plans and the sanitation-related Swachh Bharat action plans. Even though a cause of economic exclusion has been addressed when the mandatory community contributions to capital expenditures to water facility has turned optional, a sound policy should identify and address all possible roots causes of discrimination. This is not easy to solve, as it touches upon the relationships between community members as well as their ties with their Panchayat Raj Institutions. Yet the debate on community-led demand shortcomings should be addressed and lead to innovative solutions, for instance those introducing target-based planning organised on reliable and disaggregated data.

Transparency, public participation and accountability: Other crucial drivers to improve governance are the mechanisms pertaining to transparency, public participation and accountability. In that regard, the sector already integrates provisions to organisation community monitoring and social audits for water and sanitation services. Civil society organisations engaged in the sector have nonetheless advocated to render social audits mandatory not only at village, but also block and district level. This recommendation would enable to track down how the services requests are processed within the bottom-up approach to planning for water and sanitation.

As the new framework agenda of the Sustainable Development Goals is swiftly shaping a new organisation of the development policies, it is hoped that this study will provide a timely input to reflect on the manner in which the human rights to water and sanitation may contribute to an enabling framework for the achievement SDG 6 and thus to ensure a universal and equitable access to water.

ANNEX 1: THE HUMAN RIGHTS TO WATER AND SANITATION

The human rights to water and sanitation (HRWS) refer both to a normative content, that defines the substantive elements specific to these rights, and to a set of human rights principles that govern these rights. These principles are formulated in a set of procedural requirements to be met when planning, implementing and monitoring these rights. Both these components of the HRWS are presented below.

1.1 The normative content of the human rights to water and sanitation

The normative content categories of the rights to water and sanitation serve to describe the range of issues that states need to take into account in the context of water and sanitation service provision.

1.1.1 Availability

The normative content category of ´availability´ demands that water and sanitation must be made available to everyone in the household or its immediate vicinity, in sufficient quantity and on a continuous basis, for personal and domestic use.

- Water: The supply of water must be sufficient and continuous, for personal and domestic use, which includes drinking, personal sanitation, washing of clothes, food preparation and personal and household hygiene[171]. There must be a sufficient number of water outlets to ensure that collection and waiting times are not unreasonably long.[172]

- Sanitation: There must be a sufficient number of sanitation facilities with associated services to ensure that the needs of people are met and collection and waiting times are not unreasonably long.[173] Although it could tempting to determine a specific minimum number of toilets needed to meet the requirement of availability, such determinations can be counterproductive in human rights terms as they must be assessed along with the sanitation requirements of any community.[174] Also, sanitation

[171] UN CESCR 'General Comment 15' in 'Note by the Secretariat, Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies' (2008) UN Doc HRI/GEN/1/Rev.9 [12(a)], [37(a)] and [37(c)];UNHRC 'Report of the Independent Expert on the Issue of Human Rights Obligations Related to Access to Safe Drinking Water and Sanitation, Catarina de Albuquerque' (2009) UN Doc A/HRC/12/24 (Sanitation Report) [70]; UNHRC 'Report of the Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation' (2011) UN Doc A/HRC/18/33 (Planning Report) [8(a)]; UNHRC 'Report of the Independent Expert on the Issue of Human Rights Obligations Related to Access to Safe Drinking Water and Sanitation, Catarina de Albuquerque' (2010) UN Doc A/HRC/15/31 (Non-State actors Report) [47(a)] and[47(c)].

[172] UN CESCR 'General Comment 15' (n 1) [37(a)].

[173] UN CESCR 'General Comment 15' (n 1) [37(a)].

[174] UNHRC Sanitation Report (n 4) [71].

is only considered available when the collection, transport, treatment and disposal or reuse of human excreta and associated hygiene is ensured.[175]

Water, sanitation and hygiene facilities and services must be available at the household level or its immediate vicinity and in all places where people spend significant amounts of time. States bear a special responsibility to provide access to water and sanitation to people in public institutions (e.g. prisons, schools, hospitals, refugee camps) and public places (e.g. markets). States must furthermore ensure regulation, including in the context of places controlled by non-state actors, such as (rented) homes, workplaces, private health institutions and schools.

To ensure a sufficient amount of water for personal and domestic use – especially where water is scarce – the use of water for personal and domestic use must be prioritised over other uses.

1.1.2 Physical accessibility

The normative content category of 'physical accessibility' demands that infrastructure must be built and located in a way that facilities are accessible for all at all times, including for people with particular needs, such as children, older persons, persons with disabilities or chronically ill persons. The location of public sanitation and water facilities must furthermore ensure minimal risks to the physical security of users. In order to ensure that all needs are considered, participation is vital.

• Time and distance: The amount of water users are able to collect and whether they will use sanitation facilities depends on the time and distance taken to collect water and to reach a sanitation facility. Sanitation and water facilities must be physically accessible for everyone within or in the immediate vicinity of each household, health or educational institution, public institution and workplace, or any other place where people spend significant amounts of their time.[176] States should set minimum standards with regard to the location of water and sanitation facilities. To determine national standards, states may use international minimum standards as guidance,[177] while ensuring that these are not used as absolute values. Moreover, states should always aim for the highest standard and progressive improvement.

• Physical security: The location of water and sanitation facilities must ensure physical security of all users. Facilities must be within easy reach and with safe paths to get there and located in a safe area, including at night.[178] The knowledge of the community will be crucial to determine a location that is safe and easily accessible for all and at all

[175] UNHRC Sanitation Report (n 4) [63].
[176] UN CESCR 'General Comment 15' (n 1) [12(c)(i)] and[37(c)]; UNHRC Sanitation Report (n 4) [75-76].
[177] Water outlets should be placed so that a round trip to fetch water will take a maximum of 30 minutes. Where household sanitation is not possible in the short term, sanitation facilities should be shared by a maximum of five households. See: WHO, UNICEF Joint Monitoring Programme, JMP, Report of the Second Consultation on Post-2015 Monitoring of Drinking-Water, Sanitation and Hygiene, 2012, available at http://www.wssinfo.org/fileadmin/user_upload/resources/WHO_UNICEF_JMP_Hague_Consultation_Dec 2013.pdf. Also see G. Howard, J. Bartram, Domestic Water Quantity, Service Level and Health, WHO, 2003
[178] UNHRC Sanitation Report (n 4) [75].

times. States must take positive measures to ensure physical security when accessing water and sanitation facilities.[179]

• Design of facilities: Water and sanitation facilities must be designed in such a way that users can physically access them, in an easy manner. Mechanisms to extract water from pipes or wells, and the designs of sanitation facilities need be adapted to the needs of older persons, children, persons with disabilities, and chronically ill people, and pregnant women. For sanitation facilities, the needs of these individuals have implications for the entrance size of the sanitation facility, the interior space, handrails or other support mechanisms, the position of defecation, as well as other aspects.[180]

1.1.3 Affordability

Access to sanitation and water facilities and services must be affordable for everyone.[181] The payment for services must not limit one's capacity to acquire other basic goods and services, including food, housing, health and education, guaranteed by other human rights. Affordability of water and sanitation services as well as associated hygiene must ensure people are not forced to resort to other, unsafe alternatives. While human rights do not generally call for services to be provided free of charge, this necessitates free services when people are unable to pay.[182]

• Connection and construction costs and operation and maintenance. These costs are relatively high and not paid regularly. For these kinds of costs, subsidies, payment waivers and other mechanisms must be established in order to ensure affordability.

• Affordability of ongoing costs. This includes the payment of regular user fees for an ongoing service delivery. This requires the development and monitoring of tariff systems, set by an independent regulatory body that operates on the basis of human rights and ensures that tariffs are affordable for all.

Affordability must be considered in tariff systems for water and sanitation service provision and can be regulated through social security and subsidy schemes. Affordability can be evaluated by considering financial means that have to be reserved for the fulfilment of other basic needs and purposes, and those for payment of water and sanitation services. States may refer to international guidance in establishing affordability. These however vary significantly and no one standard is appropriate for all or even within countries. Generally, international standards recommend either 3% (UNDP) or 5% (OECD) as a maximum percentage of household income that should be devoted to water and sanitation bills.

When water disconnections are carried out due to defaulting payment, due process must be followed prior to disconnection and it must be ensured that individuals still have at least access to a minimum essential level of water. Likewise, when water-borne sanitation is used, water disconnections must not result in denying access to sanitation.[183]

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[179] UN CESCR 'General Comment 15' (n 1) [12(c)(i)]; UNHRC Sanitation Report (n 4) [75].
[180] UNHRC Sanitation Report (n 4) [76].
[181] UN CESCR 'General Comment 15' (n 1) [12(c)(ii)] and [37(h)]; UNHRC Non-State actors Report (n 14) [47] and [50]; UNHRC Planning Report (n 3) [57(j)].
[182] UN CESCR 'General Comment 15' (n 1) [12].
[183] UNHRC Independent Expert on the Issue of Human Rights Obligations Related to Access to Safe Drinking Water and Sanitation, 'Good Practices' related to Access to Safe Drinking Water and Sanitation:Questionnaire' (2010)[Question no 3].

1.1.4 Quality and safety

Water and sanitation services should be provided in such a way as to protect the health of users and the general public. Water must be safe for human consumption and for personal and domestic hygiene. It must be free from microorganisms, chemical substances and radiological hazards that constitute a threat to a person's health. Sanitation facilities must be hygienically and technically safe to use and must effectively prevent human, animal and insect contact with human excreta to protect the health of users and the community.[184] All toilets must allow for anal and genital cleansing, commonly with toilet paper or water. Furthermore, toilets must provide hygiene facilities for washing hands with soap and water and must enable menstrual hygiene
management for women and girls, including the disposal of menstrual products.[185]

Water must be protected from contamination, including through the prohibition of dumping sewage or waste and the containment of seepage of fertilizers, industrial effluents and other pollutants into the groundwater.

States should develop and implement water quality standards that must be monitored and enforced. The WHO developed guidelines[186] on water quality, which states may use as guidance. States must however always consider the national and local situation. States must also bear in mind that minimum standards may fail to meet individual's particular needs, such as for persons that are particularly vulnerable to infections, and must therefore never be used as absolute standards. Also, the obligation to progressively realise the rights requires standards to improve over time.

States must take positive measures to ensure hygiene promotion and education to all,[187] and to take positive measures to monitor water quality standards, tackle water pollution and ensure compliance with national wastewater purification regulations, especially for drinking water suppliers.

1.1.5 Acceptability

The principle of acceptability requires that water and sanitation services take into account the cultural needs and preferences of users.[188] Therefore, participation is of particular importance to ensure acceptability.

- Water must be of an acceptable colour, odour and taste for each personal or domestic use, as people may otherwise resort to unsafe alternatives.[189] The water facility itself must also be acceptable for use, especially with regard to personal hygiene. The quantity of water facilities alone will not determine the actual usage; in order for facilities to be 'acceptable', facilities must also provide for the privacy and dignity of users.[190]

[184] UN CESCR 'General Comment 15' (n 1) [12(b)];UNHRC Sanitation Report (n 4) [72].
[185] UN CESCR 'General Comment 15' (n 1) [12(b)];UNHRC Sanitation Report (n 4) [72].
[186] Guidance for water quality: WHO, Guidelines for drinking-water quality, 4th edition, (Geneva, 2011).
[187] Ibid [74].
[188] UNHRC Sanitation Report (n 4) [80]; UNHRC Planning Report (n 3) [8(c)] and[71].
[189] UN CESCR General Comment 15' (n 1) [12(b)].
[190] UNHRC 'Report of the Special Rapporteur on the human right to safe drinking water and sanitation' (2013) UN Doc A/HRC/24/44/Add.3 [25] (Mission to Thailand).

• Sanitation facilities will only be acceptable to users if the design and conditions of use correspond to the preferences of users. Acceptability often requires privacy, as well as separate facilities for women and men in public places, and for girls and boys in schools.[191] Facilities will need to accommodate common hygiene practices in specific cultures, such as for anal and genital cleansing. Toilets for women and girls must have facilities for the disposal of menstrual materials and for menstrual hygiene management.[192]

1.2 Human rights principles

The human rights principles as listed below constitute general human rights safeguards that are of particular importance in the realisation of the rights to water and sanitation.

1.2.1 Non-discrimination and equality

International human rights law envisages the equal enjoyment of all rights by all people. The principle of non-discrimination and equality is therefore a cornerstone of human rights practice. It encompasses both the prohibition of discrimination and the obligation for states to work towards equality in water and sanitation service provision. The principle of non-discrimination and equality requires paying attention to a number of issues:

• It governs the prohibition of discrimination of individuals or groups on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.[193]

• States must furthermore be mindful of de facto discrimination and – where this is revealed – take immediate measures to effectively end it. Certain practices or legislation may have a (unintended) discriminatory effect on certain people.

• In order to reach substantive equality of water and sanitation service provision for all, states must work towards eliminating existing inequalities. This requires knowledge of disparities, which typically not only include income groups but also rural – urban populations, disparities based on gender and the de facto exclusion of marginalised groups. Targeted affirmative measures must be taken to ensure that gaps between those served and those unserved are narrowed and eventually closed.

Some places, persons and groups will often require particular attention in the realisation of the rights to water and sanitation, as they often are often marginalised and excluded or are potentially vulnerable:

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[191] See for example the case summary of the Indian supreme Court of 2012: Environment & Consumer Protection Foundation v Delhi Administration and Others.
[192] UNHRC Sanitation Report (n 4) [80].
[193] See for example Art. 2 (2) International Covenant on Economic, Social and Cultural Rights and Art. 2 (1) International Covenant on Civil and Political Rights : International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966,entered into force 3 January 1976) 993 UNTS 3 (ICESCR); International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

• Informal settlements, rural and urban deprived areas and water scarce regions: States have the responsibility to provide water and sanitation facilities and services for all, irrespective of land tenure and property rights. Some cases in this publication refer to the obligations of states with regard to the supply of water and sanitation in informal settlements, where lack of secure tenure is often used as a justification for a lack of services. In order to close the gap between those served and unserved, states need to give particular attention to people in rural and urban deprived areas and water scarce regions who often disproportionally suffer from a lack of water and sanitation.

• Groups that are potentially vulnerable and/or marginalised: States are obliged to take positive measures to fulfil the rights to water and sanitation of the most marginalised and vulnerable individuals and groups. Individuals and groups who have been identified as potentially vulnerable or marginalised include in particular: Indigenous peoples, nomadic and traveller communities, refugees, asylum seekers, internally displaced persons and returnees, victims of natural disasters, prisoners, older persons, people with disabilities, people with serious or chronic illnesses, children, women and transgender and intersex individuals.

1.2.2 Access to information

Access to information refers to the public entitlement to seek and receive information about current and planned water and sanitation law, policies and programmes. This encompasses the duty of the state to make information available, including for example on the provision of services, tariff systems and the quality of water and sanitation. Only informed users of water and sanitation services will be able to voice concerns and hold entities to account.

Consequently, states must make resource allocations and relevant financial information on public and private water service providers, publicly available.[194] States should disseminate information through channels that are easily accessible by all and ensure the widest possible circulation.[195] This includes the dissemination through for example local radio, billboards, newspapers or information centres.[196] In some countries the digitalisation of information and the use of internet may be a good way to reach out to people. States must ensure that information is translated in all relevant languages and dialects and ensure that people who are unable to read can access information through other means, such as radio and through information centres. In any case, it is crucial that states always consider the particular needs of the individuals or groups that have an interest in the information available.

As states must always ensure equality in access to information, special measures may have to be undertaken in order to make information available to people who are often not reached. States must furthermore ensure that everyone can equally access awareness raising programs and education (on for example hygiene education and the effect of sanitation on health and the environment).[197]

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[194] UNHRC 'Report of the Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation' (2011) UN Doc A/HRC/18/33 (UNHRC Planning Report) [72].
[195] UNHRC 'Report of the Independent Expert on the Issue of Human Rights Obligations Related to Access to Safe Drinking Water and Sanitation, Catarina de Albuquerque' (2009) UN Doc A/HRC/12/24 (UNHRC Sanitation Report) [66].
[196] UNHRC Planning Report (n 3) [71].
[197] UN CESCR 'General Comment 15' (n 1) [26].

1.2.3 Participation

The human rights to water and sanitation can only be realised in an effective manner when people become part of all processes that relate to the realisation of these rights. Participation ensures better implementation and enhances the effectiveness and sustainability of interventions, as it ensures that local conditions and needs can be taken into account. "Opportunities for participation, including community needs assessments, must be established as early as possible. Any plan or decision-making that relates to the realisation of the rights to water and to sanitation must be developed through a participatory and transparent process.

Participation must be active, free and meaningful. It must go beyond mere information-sharing and superficial consultation, and involve people in decision-making; providing real opportunities to influence the planning process. The organisation of a truly participatory process is challenging. Different mechanisms and approaches are to be adopted, including consultations with various stakeholders, public meetings and hearings as well as the opportunity to submit written comments and feedback."[198]

"Systematic participation is crucial in every phase of the planning cycle; from diagnosis to target setting, and from implementation to monitoring and evaluation."[199] Also, all decision-making, actions and development of legislation must be based on meaningful participation of stakeholders. This includes that people must be made aware of the possibilities to participate, and opportunities to participate must reach out to all stakeholders and be organised at times and locations convenient for them to attend.

"Disadvantaged and at-risk people and communities must be represented, to ensure that participation is not only for a few well-established non-governmental organisations or local elites".[200] States must ensure equal access to participation opportunities, especially for those that are often excluded or marginalised, for example for women.

1.2.4 Accountability

For the rights to water and to sanitation to be realised, service providers and public officials must be accountable to users. There are two different requirements that need to be taken into account to ensure accountability:

- Right to a remedy: Individuals or groups who feel that their rights have been violated must have access to independent review mechanisms and courts to have their complaints heard and resolved. Remedies provided for should include restitution, compensation, legally binding assurances of non-repetition and corrective action.[201] States must raise awareness and make information on remedies available to all.[202]

[198] UNHRC Planning report (n 3) [68].
[199] Ibid., [68].
[200] Ibid., [70]; also "groups that should have opportunities to participate include civil society organizations, community-based organizations, national human rights institutions, academia and research institutions, the private sector and above all the communities and people concerned themselves, with a special emphasis on women's input."
[201] C. de Albuquerque, V. Roaf, On the right track – Good practices in realising the rights to water and sanitation, p. 177, 2012, available at www.ohchr.org/EN/Issues/WaterAndSanitation/SRWater/Pages/SRWaterIndex.aspx
[202] Ibid [41].

• Oversight responsibilities: Mechanisms must be enacted that establish oversight and control between both public and private actors in water and sanitation provision. Clear institutional mandates must be defined to build accountability into the entire system of water and sanitation provision. Actions taken or decisions made under those mandates must be accountable and regulated through a system of oversight responsibilities.[203] Monitoring is essential in order to ensure all actors can be held accountable. This is especially relevant when water and sanitation service provision is decentralised, in order to prevent fragmentation of responsibilities and a lack of coordination and control.

States are free to delegate the operation of water and sanitation services to private operators on the condition that independent monitoring and remedies are in place to ensure accountability of private actors towards users and the states. With regards to monitoring, states must set up effective bodies and enforceable processes to ensure that public or private service providers will comply with human rights.[204] Service providers must furthermore assess the actual and potential impact of their activities in the realisation of the human rights to water and sanitation.[205]

1.2.5 Sustainability

The rights to water and sanitation must be realised for present and future generations.[206] Water and sanitation facilities, services, and water as a resource, must be economically, environmentally and socially sustainable.[207] The sustainability of water and sanitation services relies on various factors:

• Operation and maintenance is crucial for the sustainability of facilities and services. When infrastructure fails due to a lack of operation and maintenance, a false impression of availability of services is created.[208] States must therefore establish clear responsibilities for the sustainable operation of service provision. For example, deteriorating water and sanitation infrastructure causes yearly water losses of millions of cubic meters in many mega-cities' supply systems.[209]

• Prioritisation of uses for personal and domestic needs must be guaranteed in order to ensure sufficient amounts of water are available, including for future generations. The world population continues to grow, water needs are increasing and freshwater will become scarcer due to climate change.[210] However, even under those conditions, the available fresh water is still sufficient to meet the personal and domestic needs of all people.[211]The overall increase of water uses by other sectors makes prioritisation

[203] Ibid.
[204] UN CESCR 'General Comment 15' (n 1) [24].
[205] UNHRC 'Report of the Independent Expert on the Issue of Human Rights Obligations Related to Access to Safe Drinking Water and Sanitation, Catarina de Albuquerque' (2010) UN Doc A/HRC/15/31 (UNHRC Non-State actors Report) [63(h)].
[206] UN CESCR 'General Comment 15' (n 1) [11].
[207] UNHRC Independent Expert on the Issue of Human Rights Obligations Related to Access to Safe Drinking Water and Sanitation, 'Good Practices' related to Access to Safe Drinking Water and Sanitation: Questionnaire' (2010) [question no 10].
[208] For a brief overview of failures in water and sanitation infrastructure, see: UNHRC 'Report of the Special Rapporteur on the human right to safe drinking water and sanitation' (2013) A/HRC/24/44 [4].
[209] Ibid. Para. 4
[210] Ibid. Para. 5
[211] Ibid.

of water for personal and domestic use crucial to ensure its sustainable availability for all.

• Non-retrogression: Article 2 (1) ICESCR demands that water and sanitation must be progressively realised for all. This includes the obligation of non-retrogression and of water and sanitation to be available over the long term, including for future generations.[212] States must ensure that all can enjoy a minimum level of services; also when resources are constrained due to for example financial crisis, measures must include the use of targeted programs aimed at those most in need.[213]

• Resource protection: General Comment 15 states that: 'States parties should adopt comprehensive and integrated strategies and programmes to ensure that there is sufficient and safe water for present and future generations'.[214] This for example includes the need to protect resources from contamination, over-extraction, monitoring existing resources and increasing the efficient use of water by end-users. With the growing recognition of environmental rights, judges worldwide have shown sensitivity to the protection of the interests of future generation and the prevention of irreversible damage. The precautionary principle is among the principles the judiciary has integrated for the protection of future interests.

[212] UN CESCR 'General Comment 3' in 'Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies' (2008) UN Doc HRI/GEN/1/Rev.9 [10] (UN CESCR 'General Comment 3'); UNHRC Report of the Special Rapporteur on the human right to safe drinking water and sanitation (2013) A/HRC/24/44 [12].
[213] UN CESCR 'General Comment 15' (no 1)[13].
[214] UN CESCR 'General Comment 15' (n 1) [28]. 'Such strategies and programmes may include: (a) reducing depletion of water resources through unsustainable extraction, diversion and damming; (b) reducing and eliminating contamination of watersheds and water-related eco-systems by substances such as radiation, harmful chemicals and human excreta; (c) monitoring water reserves; (d) ensuring that proposed developments do not interfere with access to adequate water; (e) assessing the impacts of actions that may impinge upon water availability and natural-ecosystems watersheds, such as climate changes, desertification and increased soil salinity, deforestation and loss of biodiversity; (f) increasing the efficient use of water by end-users; (g) reducing water wastage in its distribution; (h) response mechanisms for emergency situations; (i) and establishing competent institutions and appropriate institutional arrangements to carry out the strategies and programmes.'

ANNEX 2: BACKGROUND TO INDIAN CONTEXT ON WATER AND SANITATION SECTOR

The country of India has known some tremendous evolution in the past decade with respect to the access to water and sanitation. With 94% of its population having access to improved water sources, including 28% piped into premises, the State of India has achieved his target on water in 2015 for Millennium Development Goal (MDG) 7c.[215] As for sanitation, the country's result amounts to a moderate progress with 40% of the population having access to improved sanitation facilities. The discrepancy in rural areas with respect to urban areas for sanitation has impacted this outcome with only 28% of the rural population having access to improved sanitation against 63% in urban areas. Comparatively, water access has benefited a more even outcome with respectively 97% in urban areas and 93% for rural areas.

While the country is embarking on the Sustainable Development Goal 6, the roadmap displays a series of challenges to be addressed that appear by no means easy to tackle. First and foremost, the state of the water resource is worrisome in perspective of the gigantic size of the population, its growth rate and its related development needs. While the country accounts for more than 18% of the world's population, India has only 4% of world's renewable water resources and 2.4% of world's land.[216] The country is considered in water-stressed situation with only 1544 m3 per capita per year water availability as per census 2011 and moving towards turning water scare.[217] Many regions already face acute situation with 16.2% of the local assessment units (at Blocks administrative level) being categorised as "over-exploited" and an additional 14% as either "critical" or "semi-critical" stage. Further, it has been estimated that under the current consumption trend the demand gap for irrigation could be of 250 billion m3 by 2050, caused in particular by low water-use efficiency.[218] In addition, the country also has to cope with the issues of climate change impacts leading to variability of the water resources and an increase in floods and droughts pattern and the increasing pollution of fresh water. The lack of wastewater infrastructure in urban areas places developing cities as a major contributor of polluted water with an estimated 40 million m3 of sewage produced every day, of which barely 20% is treated. As regard water access, the non-maintenance of infrastructures in place is identified as significant problem.

In relation with these challenges, the issue of inequality in access to drinking water, sanitation and water for other basic purposes will grow steadily in the country if left without proper response. Government of India acknowledges the situation already features conflicts among water users and various water uses at village, district, State and
National levels, competing demands between several sectors and ecosystems' sustainability, and may lead to social unrests.[219]

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[215] UNICEF and World Health Organization (2015), Progress on Sanitation and Drinking Water – 2015 update and MDG assessment, WHO Library Cataloguing-in-Publication Data
[216] M/o Water Resources (2012), National Water Policy
[217] National Institution for Transforming India (2015), Raising Agricultural Productivity and Making Farming Remunerative for Farmers: An Occasional Paper
[218] National Institution for Transforming India (2017), Appraisal Document of Twelfth Five Year Plan 2012-17
[219] Ibid.

Against this background, the Federal State of India has to set up and coordinate appropriate governmental measures to meet the water challenge, taking into account its institutional arrangement. The constitutional order of the country is structured with a distribution of powers to Union Government, State Governments and a third tier encompassing powers shared between the two level of authorities, namely the Concurrent List. As per the Constitution of India, water is a State subject. Whilst the water crisis is getting more acute, one may found voices advocating to place water in the Concurrent List though.[220] Nonetheless, the Union Government wields its influence on States by drafting model bills and adopting national policy framework and national guidelines to orientate States in their governance of water and sanitation. The impact of proposition on legal reforms by Centre Government has been limited hitherto given that the 2016 draft National Water Framework Bill has not been enforced and that a legal gap persists as regard sanitation matters.[221] Further, the 1970 Groundwater Model Bill, revised in 2005, is deemed to contain outdated provisions with respect to the current knowledge of the resource and the effectiveness of its legal measures.[222] Centre Government has produced a Model Groundwater Act, with the latest draft version issued in 2016, that has not been taken up by States. Yet, the utilisation of groundwater accounts for 80% of the drinking water demand in the country.[223]

At the level of national policies, the Union Government sets up broad goals for the governance of water and sanitation through its line ministries with target based to be achieved by States and their related devolved authorities. The national policy implementation mechanisms often display a leeway for States to decide as to how the policy provisions are to be carried out. Accordingly, States are required to define their own goals and targets in alignment with the national framework and to produce the relevant action plans in order to meet their targets. One may argue then that the strongest influence of the Union Government on States stems from its financial support channelled through the national flagship programmes and centrally sponsored schemes. The transfer of grants from the Centre goes along with earmarking instructions that State must follow for the utilization of funds. Thus provisions are foreseen to condition the execution of instalments on the basis of compliance with earmarking instructions. For oversight purposes, line ministries coordinate national monitoring systems equipped with GIS data device, conduct financial audits and may resort to verification missions.

The Union Government itself coordinates all sector fields through planning authorities that establish development priorities that hold sway on the work of its line ministries. Yet, planning policies from Central State has undergone a major governmental reform with the closure of the National Planning Commission, an institutional body in place since the independence of the State of India that produced Five Year development plans and elaborated inter alia draft models bills on water through its expert working groups. The Twelfth Five Year Plan – spanning from 2012 to 2017 – thus ends a 60-year long period of policy implementation on the basis of

[220] Cullet, P., Suhas P., Himanshu T., Vani ,M. S., Joy, K. J., Ramesh, M. K., (2012), Water Conflicts In India: Towards a New Legal and Institutional Framework, Pune: Forum for Policy Dialogue on Water Conflicts in India.
[221] For further insights on the Indian legal framework: Alamar, R., Kručková, L., and Turner, R. (2017), WaterLex Country Mapping India, WaterLex; and Environmental Law Research Society (2012), Governing Water in India: Review of Law and Policy Developments, ELRS
[222] Cullet, P. (2014). Groundwater law in India: towards a framework ensuring equitable access and aquifer protection. Journal of Environmental Law, 26(1), 55-81.
[223] Planning Commission (2012), Twelfth Five Year Plan (2012–2017) – Faster, More Inclusive and Sustainable Growth – Volume 1

that instrument. This decision takes part of the current Central Government's strategy to induce a new approach to development that is now being steered by the National Institution for Transforming India (NITI Aayog) established in January 2015. The reform is based on setting the conditions conducive to rapid growth. It is anticipated that a fast-growing economy will support the wealth of the poorer sections of society in two folds: first by directing pulling the poor into gainful employment; second by yielding revenues that that allow the government to finance large-scale anti-poverty programmes, education and health.[224] NITI Aayog is in charge of creating new instruments to supersede the former Five Year Plan approach. Another body of the Union Government related to planning is the Finance Commission, whose status is grounded in the constitution of the country. Under the oversight of the Parliament, this body holds a mandate pertaining to tax distribution between Union and States, governing principles of grants-in-aid from Union to States and resource supplementation of their devolved authorities.[225] It is at such vested with the power to issue authoritative recommendations regarding sound finance within policy implementation. In the frame of the planning reform, NITI Aayog has been tasked to produce the following documents[226]:

> "(i) A vision document keeping in view the social goals set and/or proposed for a period of 15 years;
> (ii) A 7-year strategy document spanning 2017-18 to 2023-24 to convert the longer-term vision into implementable policy and action as a part of a "National Development Agenda"; and
> (iii) A 3-year Action document for 2017-18 to 2019-20 aligned to the predictability of financial resources during the 14th Finance Commission Award period."

2.1 Water and Sanitation related Ministries from the Union Government

As mentioned above, although the Constitution does not provide the Union with explicit responsibilities with respect to water and sanitation (notwithstanding development and disputes concerning inter-state rivers or river valleys), the Executive Cabinet (Council of Ministers) is indeed comprised of ministries directly related to water and sanitation.

The Ministry of Water Resources, River Development, and Ganga River Rejuvenation (MoWR) is the preeminent authority for India's water resources, including formulating national water policy and programmes. Under the umbrella of the MoWR are various organisations, most notably the Central Water Commission (CWC) and the Central Ground Water Board (CGWB). The CWC is responsible for "initiating, coordinating and furthering in consultation with the State Governments concerned, schemes for the control, conservation and utilization of water resources in the respective State for the purpose of flood management, irrigation, drinking water supply and water power generation."[227]

The CGWB seeks to "[d]evelop and disseminate technologies and monitor and implement national policies for the scientific and sustainable development and management of India's

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[224] National Institution for Transforming India (2017), Appraisal Document of Twelfth Five Year Plan 2012-17

[225] Constitution of India, Part XII.—Finance, Property, Contracts and Suits.— Arts. 280—281

[226] [226] National Institution for Transforming India (2017), Appraisal Document of Twelfth Five Year Plan 2012-17

[227] MoWR "Central Water Commission New Delhi", available at http://mowr.gov.in/forms/list.aspx?lid=565, last consulted on 06/07/2017.

ground water resources, including their exploration, assessment, conservation, augmentation, protection from pollution, and distribution, based on principles of economic and ecological efficiency and equity."[228] CGWB operates throughout the country with 18 regional offices. Water quality analysis, ground water pollution & modelling studies, water supply investigations, artificial recharge studies, monitoring ground water observation wells are just a few of the activities of CGWB.

The Ministry of Drinking Water & Sanitation (MoDWS) undertakes as its mission to "ensure all rural households have access to and use of safe and sustainable drinking water and improved sanitation facilities by providing support to States in their endeavour to provide these basic facilities and services".[229] Having evolved into a stand-alone ministry from the Ministry of Rural Development in 2011, it particularly concentrates on rural areas in India. The MoDWS seeks to provide support to local communities to autonomously manage their water sources and sanitation as well as undertake:

- Planning, implementation and monitoring of centrally sponsored programmes and schemes for safe drinking water and sanitation in rural areas;
- Support Research & Development initiatives, Information, Education, and Communication and Human Resource Development activities for all stakeholders in drinking water and sanitation sector;
- Building partnerships and synergizing efforts with other sector partners, organisations UN and bilateral agencies, NGOs, R&D institutions and civil society;
- Assist State in resource mobilisation from multilateral and bilateral agencies through government of India;
- Technical support to States through seminars, interactions, documentation of best practices and innovations;
- Provide inputs to other Departments/Ministry for formulation for policies impacting water and sanitation issues;
- Recognizing and awarding Panchayats and organisations for excellent work in rural sanitation.

MoDWS institutes the National Rural Drinking Water Programme which is a comprehensive multi-dimensional scheme in which some of the chief activities include utilising technological advances to secure water quality and allocation of funds from the Union government for advancing drinking water and sanitation coverage in rural areas. MoDWS also leads the Swachh Bharat Mission launched in 2014 seeking to attain universal sanitation coverage and achieve an open-defecation free (ODF) India by 2019 to coincide with the 150th year of the birth anniversary of Mahatma Gandhi. Overall The Strategic Plan 2011-2022, "Ensuring Drinking Water Security In Rural India" seeks to ensure that, minimally, 90% of rural households have access to piped water supply and "ensure that every rural person has enough safe water for drinking, cooking, and other domestic needs as well as livestock throughout the year including during natural disasters."[230]

[228] MoWR "Central Ground Water Board Faribadad", available at http://mowr.gov.in/forms/list.aspx?lid=243, last consulted on 06/07/2017.
[229] MoDWS, "About Us", available at http://www.mdws.gov.in/about-us, last consulted on 06/07/2017.
[230] MoDWS, "Annual Report 2015-2016"; and M/o Rural Development, Department of Drinking Water and Sanitation (2011), Strategic Plan – 2011- 2022: "Ensuring Drinking Water Security In Rural India"

There are several other executive ministries which have mandates relating to drinking water and sanitation. Likely in recognition of the interrelated activities of these ministries, the Ministry of Urban Development and the Ministry of Housing and Urban Poverty Alleviation were recently merged to form the Ministry of Housing and Urban Affairs (MoHUA). It has been noted that the merger of the Ministries will foster more cohesive policy and programming.[231] Moreover, the Cabinet Minister for MoHUA is also serves in the same role for MoDWS, Ministry of Panchayati Raj, and Ministry of Rural Development.

MoHUA is the national government authority to formulate policy and support programming in coordination with other ministries and state governments in relation to urban employment, poverty, and housing.[232] Their mandate also covers water supply (subject to overall national perspective of water planning and coordination assigned to the Ministry of Water Resources, River Development and Ganga Rejuvenation), sewage, drainage and sanitation relating to urban areas and linkages from allocated water resources, including relative international cooperation and technical assistance.[233] An important part of the ministries' work includes focus to support marginalized persons in society like women.

Ministry of Rural Development oversees development and welfare schemes in rural areas of India with a view to eradicating poverty and achieving sustainable growth through increasing livelihoods opportunities, providing a social safety net and developing infrastructure growth.[234] Drinking water has been included among the five elements of social and economic infrastructure pivotal to improved life quality in rural areas,[235] but the Department of Drinking Water and Sanitation has been closed since the constitution of the MoDWS as mentioned above. Through its Department of Land Resources, Ministry of Rural Development is also in charge of the Integrated Watershed Management Programme, whose main objectives are to restore the ecological balance by harnessing, conserving and developing degraded natural resources such as soil, vegetative cover and water.[236]

The Ministry of Environment, Forest, and Climate Change oversees the water pollution (prevention and control act) discussed in more detail in the following section.

Pursuant to the national law, Food Safety and Standards Act, the Food Safety and Standards Authority which counts among its membership representatives from 7 ministries of Central Government, is responsible for food safety including packaged drinking water.[237]

2.2 Devolution Process

Since 1992, the State of India has undergone a devolution process with the creation of local authorities ascribed both for rural areas, called the Panchayati Raj Institutions, and the urban

[231] NDTV, "Ministries Of Urban Development, Housing And Urban Poverty Alleviation Merged", July 2017
[232] MoHUA, "Profile.
[233] MoHUA, "Government of India (Allocation of Business) Rules", 1961
[234] Ministry of Rural Development, "About the Ministry", available at http://rural.nic.in/about-us/about-ministry, last consulted on 06/09/2017
[235] National Level Monitoring, "About the Ministry", available at http://www.ruralmonitor.in/web/about.aspx, last consulted on 06/09/2017.
[236] Ministry of Rural Development, IWMP, available at http://dolr.nic.in/iwmp_main.htm. last consulted on 20/09/2017
[237] Article 5 Food Safety and Standards Act, 2006 (23 August 2006) requiring representation from central Government ministries concerned with Agriculture, Commerce, Consumer Affairs, Food Processing, Health, Legislative affairs, and Small Scale industrie

areas, governed by Municipalities, whose existence has been constitutionalised through respectively the 73rd Amendment Act and the 74th Amendment Act.

Thus, Part IX concerning Panchayats (local governing councils) was added to the Constitution, which not only outlines Panchayat powers but also their organizational structure and composition of representative officials, among other aspects. Therein it is declared that each state shall have Panchayats at the village (Gram), intermediate (Block) and district (Zilla) levels. The village level is the last tier of local government, followed by the intermediate level - which can only be designated as such if the state has a population exceeding 2 million.[238] Panchayat representatives (councillors) are chosen by direct election. At least one-third of the seats of the Panchayats filled by direct election shall be reserved for women and seats are reserved for scheduled castes and tribes[239] in proportion to their population in the area.[240] Whereas the legislative body of the village is called the Gram Sabha, the executive body is the Gram Panchayat (GP). The three-tier local bodies are also known as the Panchayati Raj Institutions (PRI). Further, Panchayats have been entrusted by the Constitution to implement schemes pertaining to drinking water as well as health and sanitation, including hospitals, primary health centres and dispensaries. These responsibilities also include women and child development, and welfare of the weaker sections, and in particular, of the Scheduled Castes and the Scheduled Tribes.[241] With respect to water management, Panchayats are also responsible for minor irrigation, water management and watershed development; land improvement, implementation of land reforms, land consolidation and soil conservation[242].

In part IXA of the Constitution, Municipalities are categorized into three types pursuant to factors such as population size and density, territorial area, and percentage of employment in non-agricultural activities: 1) Nager Panchayat for an area in transition from rural to urban; 2) Municipal Council for a smaller urban area; and 3) Municipal Cooperation for a larger urban area.[243] State Legislatures have the authority to determine the type of municipality for a specified urban area.[244] In the same manner as Panchayats, representatives are elected by direct election and seats are reserved for scheduled castes and tribes, including minimally one third for women.[245] Further, Municipalities are entrusted by the constitution for the implementation of schemes pertaining inter alia to water supply for domestic, industrial and commercial purposes; public health, sanitation conservancy and solid waste management; urban forestry, protection of the environment and promotion of ecological aspects; slum improvement and upgradation; and safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.[246]

Accordingly, water and sanitation national programmes have since then integrated roles and responsibilities of local authorities in the management of the sector. Thus, as for rural areas – the focus of this study – the National Rural Drinking Water Programme adopts a decentralised approach based on community-led water demand planning and community and Panchayati Raj Institutions management of in-village water facilities and the protection of their local

[238] Constitution of India, at Article 243(b)2.
[239] Refer to sections 5.2.1 Scheduled Castes and 5.2.2 Scheduled Tribes.
[240] Constitution of India, at Article 243D.
[241] Constitution of India, at Article 243(G), Eleventh Schedule.
[242] Ibid.
[243] Constitution of India, at Article 243Q.
[244] The "Constitution Amendment (74th Amendment) Act", 1992.
[245] Constitution of India, at Article 243T.
[246] Constitution of India, at Article 243(W), Twelfth Schedule

sources.[247] This implies the transfer of existing drinking water supply systems to communities and PRIs for management, operation and maintenance. State Government, its agencies or public utilities may shoulder the responsibility of bulk metered transfer of water, its treatment and distribution up to the village in case of insufficient water availability from local sources. State Government role pertains otherwise mainly to the facilitation of the various stakeholders in the process and to the capacity building of PRI and communities with the support of civil society.

For implementation purpose, Gram Panchayat are to set up Village Water and Sanitation Committee (VWSC) that act as a standing committee. This bodies were introduced with the community-based management reform since 2003. GP/VWSC are responsible for:

- "Planning, designing, and implementing all in-village drinking water and sanitation activities;
- Providing facts and figures to the Gram Panchayat for reviewing water and sanitation issues;
- Providing inputs for the Village Water Security Plan;
- Ensuring community participation and decision making in all phases of in-village scheme activities;
- Organising community contributions towards capital costs, both in cash and kind (land, labour or materials), if any;
- Opening and managing bank account for depositing community cash contributions, O&M funds and management of project funds;
- Commissioning and takeover of completed in-village water supply and sanitation works through a joint inspection with Line Department Staff;
- Collection of funds through a tariff, charges and deposit system for O&M of water supply and sanitation works for proper managing and financing of O&M of the services on a sustainable basis; and empowering of women for day to day operation and repairs of the scheme;[248]

Block Panchayat are to set up a Block Resource Centre (BRC). The task of Block Resource Centres is essentially to provide continuous support in terms of awareness generation, motivation, mobilisation, training and handholding to village communities, GPs and their Village Water and Sanitation Committee. It serve as an extended delivery arm of the District Water & Sanitation Mission in terms of software support and act as a link between it and the Gram Panchayat and the village communities.[249]

District authorities are to set up a District Water and Sanitation Mission, whose functions relate in particular to:

- "Formulation, management and monitoring of projects and progress on drinking water
- Security and total sanitation in rural areas;
- scrutiny and approval of the schemes submitted by the Block Panchayat/ Gram Panchayat and forwarding them to SLSSC where necessary;
- Selection of agencies and/ NGOs and enter into agreements for social mobilisation,

[247] M/o Drinking Water and Sanitation (2013), National Rural Drinking Water Programme: Movement towards ensuring people's Drinking Water Security in Rural India, Guidelines 2013

[248] Ibid, Annexure VII

[249] Ibid, Annexure VII

- Capacity development, communication, project management and supervision;
- Sensitising the public representatives, officials and the general public;
- Engaging Institutions for imparting training for capacity development of all stakeholders, and undertaking communication campaign;
- Coordination of matters relating to water and sanitation between district representatives of Health, Education, Forests, Agriculture, Rural Development, etc as well as National programmes (…); and
- Interaction with SWSM, State Government and the Government of India."[250]

States are to establish a State Water and Sanitation Mission (SWSM), which is vested with the following responsibilities.

- "Provide policy guidance;
- Convergence of water supply and sanitation activities including Special Projects;
- Coordination with various State Government Departments and other partners in relevant activities;
- Monitoring and evaluation of physical and financial performance and management of the water supply and sanitation projects;
- Integrating communication and capacity development programmes for both water supply and sanitation;
- Maintaining the accounts for Programme Fund and Support Fund and carrying out the required audits for the accounts."[251]

Likewise, the rural sanitation programme implemented through the Swachh Bharat Mission (SBM) foresees a role of PRIs to frame the community-led total sanitation approach. [252] The guidelines of the mission specifies though that States should decide on the exact role of PRIs. They advise Gram Panchayat be involved in the social mobilization for the triggering demand, construction of toilets and also maintenance of the clean environment by way of safe disposal of waste. Further, GPs should act as the custodian of the assets such as the Community Complexes, environmental sanitation infrastructure, drainage constructed under the mission. GPs can also play a key role in promoting regular use, maintenance and up-gradation of toilets, solid and liquid waste management components and Inter-Personal Communication for hygiene education. Further, GP should organise and assist in organizing Social Audits of the programme. GPs should also be involved in the monitoring of the programme together with Block-level and District-level PRIs

At Block-level, Swachh Bharat Mission also foresees the constitution of Block Programme Management Units (BPMU). Their role is work as a bridge between the District experts and the GPs and provide continuous support in terms of awareness generation, motivation, mobilization, training and handholding of village communities, GPs and VWSCs.

At District-level, a District Swachh Bharat Mission is to be formed, that may be established by suitable changes in the existing District Water and Sanitation Mission. Its role is to plan and advise on implementation of the SBM with appropriate Information, Education and Communication strategies and convergence mechanisms with all line departments.

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[250] Ibid, Annexure VII

[251] Ibid, Annexure VII

[252] M/o Drinking Water and Sanitation (2014), Guidelines for Swachh Bharat Mission (Gramin)

The State should set up State Swachh Bharat Mission (Gramin) [SSBM(G)] that will provide coordination between the various line departments working on Rural Sanitation, Rural Drinking Water Supply, School Education, Health, Women and Child Development, Water Resources, Agriculture, Publicity, etc. Structure format is to be determined by States but there should be an Apex Committee to advise on the mission. The State Swachh Bharat Mission is to be attached to the State Water and Sanitation Mission.

As regard the implementation of the general devolution process, there has been some reluctance from State administration to comply with the decentralisation of resources, since line departments of many States are still controlling funds and functionaries.

"The status varies widely; in the case of functions, all the 29 subjects have been devolved by Karnataka and Kerala, while in Chhattisgarh activity mapping has been undertaken for 27 subjects but Government Orders are yet to be issued. The pace of devolution of functionaries has been even slower. Functionaries have not been transferred in most States, including Andhra Pradesh, Arunachal Pradesh, Haryana, Himachal Pradesh, Punjab, Tamil Nadu and Uttar Pradesh. In most other States, administrative control has been devolved to PRIs only partially. In order to strengthen the decentralization process, the Ministry of Panchayati Raj (MoPR) has been conferring awards to the States every year based on a Panchayat Devolution Index (PDI)."[253]

The latter is designed as follow:

- "In the first stage, States are assessed on the fulfilment of the following fundamental Constitutional requirements: the establishment of a State Election Commission; the holding of elections to PRIs; the setting up of State Finance Commissions; the constitution of District Planning Committees; and the reservation of seats for SCs /STs and women.
- States that fulfil each of these fundamentals qualify for evaluation of PDI which aims at assessing the status of devolution in respect of funds, functions and functionaries.
- For 2015-16, MoPR has commissioned a Devolution Index Study titled "where Local Democracy and Devolution in India is heading towards?" to assess the status of devolution of powers and resources, in order to develop an indicative evidence-based ranking- for which field assessment of actual devolution was also done."[254]

Further, the Fourteenth Finance Commission has recommended a significant thrust in the grant devolved to PRIs that amounts to a 32.8 fold increase from previous finance commission (reaching an amount of Rs.2.87 lakh crore: Rs. 28.7 trillion), with the notable specification that funds have to flow to GPs that are directly responsible for the delivery of services without passing through other level.[255]

Yet, all sector-wise drinking water is ranked third in terms of tertiary sectors functions transferred to PRIs within 26 of the 36 states of India. [256] This comes after education (29 states)

[253] National Institution for Transforming India (2017), Appraisal Document of Twelfth Five Year Plan 2012-17
[254] Ibid.
[255] Ibid.
[256] Tata Institute of Social Sciences (2016), Devolution Report 2015-16: Where Local Democracy and Devolution in India is heading towards?, Mumbai, commissioned by Mo/ Panchayati Raj

and health (27 states). The issue as to how many of the local governments exercise exclusive jurisdiction of their own and what constraints there are facing remains to be ascertained with respect to transfer of all core development functions.[257]

With respect to the implementation of the rural drinking water programme, MoDWS has produced a specific Management Devolution Index (MDI) with 21 indicators aiming to map and monitor the improvement of the transfer of funds, function and functionaries to the three-tier PRI in such a way as to enable them to plan, implement and manage the programme at their respective level.[258]

In addition, the scoring of the Management Devolution Index is used to determine in part the allocation of an Incentive Fund to States for a weightage of 10%. This criterion for allocation are used as incentive to States for decentralization and reforms in the sector. In order to get the Incentive Fund, States have to provide MoDWS with information on the "rural population managing rural drinking water supply schemes" before 31st March every year to be taken into consideration to funds allocation of the next financial year.

2.3 Financial Setting for Rural Water and Sanitation

The endeavour to achieve water and sanitation for all still requests investments in infrastructure development and maintenance. According to government figures[259], as many as 13.10 lakh (1,310,000) habitations approximately (76.43%) were fully covered with 40 litres per capita per day (lpcd) safe drinking water out of the total 17.14 lakh (1,714,000) habitations at the end of September 2016. The rest are either partially covered or have chemical contamination in drinking water sources. Census 2011 reported 84.2% rural households as having improved drinking water sources like tap water, hand pumps, covered wells and tubewell/ borehole. Accordingly, such schemes in rural areas aim at ensuring safe drinking water for the remaining 15.8 % of rural households. Current Central outlay alone under National Rural Drinking Water Programme for the Twelfth Five Year Plan for MoDWS is Rs. 68,786 crore (687,860 mio). Expenditure of Rs. 38,005.51 crore (380,055.1 mio) has been reported by the States against the central releases of Rs.35,833.43 crore (358,334.3 mio) in the first four years and eleven months of the Twelfth Five Year Plan i.e. up to February 2017.[260]

As mentioned above, funds of the NRDWP are transferred to States with earmarking instructions, as follows:

Component, Purpose, Distribution and Centre-State Sharing pattern of the NRDWP at State level[261]

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257 Ibid.

258 M/o Drinking Water and Sanitation (2013), National Rural Drinking Water Programme: Movement towards ensuring people's Drinking Water Security in Rural India, Guidelines 2013;
See Annexure VIII for the List of Indicators and weightages for the Management Devolution Index for Rural population managing rural drinking water supply schemes

259 National Institution for Transforming India (2017), Appraisal Document of Twelfth Five Year Plan 2012-17

260 Ibid.

261 M/o Drinking Water and Sanitation (2013), National Rural Drinking Water Programme: Movement towards ensuring people's Drinking Water Security in Rural India, Guidelines 2013

Component	Purpose	Distribution of State NRDWP allocation	Centre-State Sharing pattern
Coverage	For providing safe and adequate drinking water supply to unserved, partially served and slipped back habitation	47%	90:10 (for NE States and J&K) 50:50(for other States)
Quality	To provide safe drinking water to water quality affected habitations.	20%	
Operation and Maintenance (O & M)	For expenditure on running, repair and replacement costs of drinking water supply projects.	15% Maximum	
Sustainability	To encourage States to achieve drinking water security at the local level through sustainability of sources and systems.	10% Maximum	100:0
Support	Support activities like WSSO, DWSM, BRCs, IEC, HRD, MIS and computerisation, R&D etc.	5 %	100:0
Water Quality Monitoring and Surveillance	For monitoring and surveillance of water quality in habitations at field level and for setting up, upgrading laboratories at State, district and sub-district levels.	3%	100:0
Total		100 %	

Besides, NRDWP allocations are weighted on the basis of the following criteria:

S. No.	Criteria	Weightage (in %)
i)	Rural population	40
ii)	Rural SC and ST population	10
iii)	States under DDP, DPAP, HADP and special category Hill States in terms of rural areas *	40
iv)	Rural population managing rural drinking water supply schemes weighted by a Management Devolution Index	10
	Total	100

* Within the Desert Development Programme (DDP) areas, considering the ratio of the population supported in these two areas, Hot Desert Areas would be given weightage of 90% and Cold Desert areas would be given weightage of 10%.

As regard the respect of the sharing pattern by States and devolution of funds, NITI Aayog warns that on the basis of the recommendations of the 14th Finance Commission, "States are expected to provide higher allocation for the sector, otherwise either target will have to be reduced or the programme may need to be confined to only drought /desert-prone areas, water quality affected areas, etc."[262]

With respect to rural sanitation, government figures display that 938 lakh (9,380,000) households, which is 51.76% of total rural households of 1813 lakh (181'300'000) in the country are reported to be covered under Individual Household Latrines (IHHL) by March 2016, out of which 176 lakh (17'600'000) IHHLs have been constructed since the launch of Swachh Bharat Mission.[263] Other schemes involved on latrine constructions includes the

[262] National Institution for Transforming India (2017), Appraisal Document of Twelfth Five Year Plan 2012-17
[263] Ibid.

Mahatma Gandhi National Rural Employment Guarantee Scheme and the Indira Awaas Yojana rural housing scheme. Current Central outlay for rural sanitation for the Twelfth Five Year Plan under MoDWS alone is Rs.37,159 crore (371,590 mio). Out of this, Rs.14,098.10 crore (140,981 mio) have been utilised against a total budget allocation of Rs. 14,175 crore (141,750 mio) during the first four years of Twelfth Plan.

Budget Estimates for the rural component of the Swachh Bharat Mission during 2016-17 is Rs.9,000 crore (90 billion). The balance funds required, in addition to the budgetary allocation for the Twelfth Plan, to achieve Mission targets of the Plan have been proposed to be made available via contributions of the private sector through commitment of corporate social responsibility and under the dedicated funds for private contributions: the Swachh Bharat Kosh and the Swachh Bharat Cess. No additional requirement of funds during the Twelfth Plan has been contemplated from budgetary sources by the Ministry of Drinking Water and Sanitation.[264]

Further, since 14th Finance Commission provides for significantly higher devolution of funds to Local bodies, it is desirable that more funds are spent by these bodies to improve the status of basic services such as water supply, sanitation, sewerage, solid & liquid waste management, etc. in their respective areas.

Project funding of the Swachh Bharat Mission display the following earmarking and funding pattern instructions[265]:

S.N.	Component	Amount earmarked as percent of the SBM(G) project outlay	Contribution Share		
			GOI	State	Beneficiary Household/ Community
a.	IEC, Start Up Activity and Capacity Building	Up to 8% of total project cost, with 3% to be utilized at the Central level and 5% at State level.	75%	25%	0%
b.	Revolving Fund	Up to 5%	80%	20%	0%
c.	(i) Individual Household Latrines	Actual amount required for full coverage	Rs.9,000 (75%) (Rs.10,800) (90%) in case of NE States, J&K and Special category States)	Rs.3000 (25%) (Rs. 1,200) (10%) in case of NE States, J&K and Special category States)	0%
	(ii) Community Sanitary	Actual amount required for full coverage	60%	30%	10%

[264] Ibid.

[265] M/o Drinking Water and Sanitation (2014), Guidelines for Swachh Bharat Mission (Gramin)

	Complexes				
d.	Administrative charges	Up to 2% of the project cost	75%	25%	0%
e.	Solid/Liquid Waste Management (Capital Cost)	Actual amount as per SLWM project cost within limits permitted	75%	25%	0%

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